

THE TAXATION OF PROFESSIONAL INCOME  
IN CANADA

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## THE TAXATION OF PROFESSIONAL INCOME IN CANADA

Taxpayers in the Canadian professions have expressed their opinions, individually, and through their professional associations, that they are unfairly taxed under present taxation legislation. While they are able to deduct the expenses incurred to earn their professional income, they would like to be placed on an equal tax basis with merchants and other taxpayers in the service industries who are able to incorporate and take advantage of certain tax concessions available to corporate taxpayers.

The British Columbia government enacted the Professional Corporations Act in 1970 which gave the option of incorporation to all taxpayers who previously, due to either law, tradition, or their professional code of ethics were unable to incorporate. Confusion arose as to whether the Department of National Revenue would recognize professional corporations and the British Columbia Act was subsequently suspended.

The Canadian taxation system has been intensively investigated in recent years and extensive amendments have been proposed by the government. To achieve equity Canadian professionals should be subject to the same tax burden as other Canadian businesses.

Professional incorporation should not be permitted due to the ethical problems it would raise. Instead professionals should be given the option under the Income Tax Act of having their income taxed at corporate rates and in addition being able to take advantage of the other tax planning mechanisms presently available to corporations. Equity will thus be established between taxpayers in the professions and other Canadian businesses.

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## THE TAXATION OF PROFESSIONAL INCOME IN CANADA

### I. INTRODUCTION

#### A. PURPOSE OF THE THESIS

This thesis will analyze the taxation of professional income in Canada. This subject is of current interest due to three recent developments in the Canadian taxation system. The first of these developments occurred on November 7, 1969 when the Honourable E. J. Benson, Minister of Finance, presented a government white paper on tax reform to the Canadian House of Commons. The second development was the enactment of the Professional Corporations Act<sup>1</sup> by the British Columbia legislative which permitted British Columbia professionals to incorporate and potentially, to have a portion of their professional income taxed at corporate rates. The third development, still pending at this time, is the liberal government's taxation bill which is expected to be introduced into the House of Commons on Friday, June 18, 1971.<sup>2</sup> This proposed legislation is reported to contain extensive revisions of existing Canadian tax legislation. Comments on the government tax bill, in so far as it applies to any of the material included in this thesis, are contained in Appendix A.

In light of the first two developments and the

and the pending 1971 Income Tax Bill it is relevant to analyze the present application of Canadian tax laws to professional income and to consider the principle alternative which is to permit professionals to be taxed as a corporation. The purpose of the thesis is to attempt to answer three questions:

1. Do professional taxpayers receive equitable tax treatment under existing Canadian legislation?
2. What would be the effect of professional incorporation on the incidence of tax on professional income?
3. In light of the existing taxation of professional income in Canada and taking into consideration the alternative of professional incorporation what, if any, changes should be made in Canada's present approach to the taxation of professional income?

Before proceeding to consider the first question, the terms professional and professional income as used in this thesis should be defined.

#### B. WHAT IS A PROFESSIONAL?

While the Income Tax Act refers to "professions"<sup>3</sup>, "professional membership dues" and "professional status"<sup>4</sup> it does not provide a definition for the term "profession" or "professional". The British Columbia Professional Corporations Act<sup>5</sup> defines a professional, when used as a noun, as a person lawfully entitled to carry on a professional service<sup>6</sup> and the act contains the following definition of a professional

service:

"professional service" means any type of personal service to the public

(i) that requires, as a condition precedent to carrying on the service, a licence or other statutory authorization; and

(ii) that, before the coming into force of this Act, by reason of law, tradition, or professional code of ethics, was not performed by a corporation,

including without limiting the generality of the foregoing, service by accredited public accountants, certified general accountants, chartered accountants, industrial accountants, agrologists, architects, barristers and solicitors, barbers, chiropractors, dental surgeons, dental technicians, dentists, foresters, hairdressers, massage practitioners, music teachers, notaries public, osteopaths, physicians and surgeons, practical nurses, registered nurses, registered psychiatric nurses, naturopathic physicians, chartered physiotherapists, registered physiotherapists, podiatrists, and veterinarians.

Traditionally the term "professions" has referred to the clergy, physicians and lawyers. This limited definition has been expanded over time to include accountants, architects, engineers and now the definition in the Professional Corporations Act broadens the definition to include everyone who requires a licence, or other statutory authorization, to carry on their service.

For the purpose of this thesis the expanded

definition of professional contained in the Professional Corporations Act will be used. Two limitations should be pointed out; the first is that many of the occupations coming under the ambit of The Professional Corporations Act do not normally generate sufficient income to warrant great concern for the amount of income tax paid; and the number of professionals with whom we are concerned is further limited in that all professionals who receive remuneration from an office or employment are in a substantially different tax situation from those receiving professional income. Having narrowed our study to those professionals who receive substantial amounts of professional income the next step is to determine which income receipts constitute professional income for income tax purposes.

#### C. WHAT CONSTITUTES "PROFESSIONAL INCOME"?

The Income Tax Act makes a fundamental distinction between business income and income from an office or employment. An income tax liability is imposed on the income of all taxpayers.

The income of a taxpayer for a taxation year for the purpose of this Part is his income for the year from all sources inside or outside Canada and, without restricting the generality of the foregoing, includes income for the year from all:

(a) businesses

- (b) property, and
- (c) offices and employments.<sup>8</sup>

Business includes a profession, calling trade, manufacture or undertaking of any kind whatsoever and includes an adventure or concern in the nature of trade but does not include an office or employment.<sup>9</sup>

Employment means the position of an individual in the service of some other person (including Her Majesty or a foreign state or sovereign) and servant or employee means a person holding such a position.<sup>10</sup>

Office means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a Minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly, senator or member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director; and officer means a person holding such an office. Notwithstanding these definitions of business, office and employment various taxpayers have contested rulings in this area and one such case<sup>12</sup> sets out four characteristics of a contract of employment:

- (1) the master has the power to

select the servant.

(2) payment is in the form of wages or other remuneration of a similar type.

(3) the master has the right to control the method of doing the work.

(4) the master has a right to suspend or dismiss.

If a professional is able to demonstrate to the Department of National Revenue, or the courts, that their income is derived from a business rather than an office or employment he is in a preferred tax position since he may deduct the expenses incurred to earn that business income<sup>13</sup> subject to certain limitations provided in the Income Tax Act.<sup>14</sup>

A recent case illustrating a taxpayers efforts to establish that his income was derived from a contract for services rather than a contract of service concerned an administrative official at McMaster University<sup>15</sup> who marked correspondence papers at home in conjunction with the Society of Industrial Accountants' correspondence course offered through the University. The appellants agreement with McMaster University provided that he would receive a fee for each lesson that he marked plus necessary postage. Because the appellant marked the papers on his own time, and at his own home, the arrangement was found to be a contract for services and he was able to deduct the expenses properly incurred to earn the income. The Tax Appeal Board did however find that the appellant was attempting to deduct an

unreasonable amount as the expenses claimed approximated the earnings derived from the marking position. The Minister of National Revenue has appealed this decision to the Federal Court of Canada.<sup>16</sup> The appeal is pending at this time.

Professionally qualified persons who receive income from an office or employment may not deduct expenses they have incurred to earn that income. Professional income is restricted to income derived from a business and this thesis will not consider the incidence of income tax on income derived by a professionally qualified person from an office or employment. An associate lawyer who receives a salary from a law firm or an associate doctor who receives a salary from a medical clinic or partnership of other doctors are both receiving income from an office or employment rather than income from a business.

## II. THE CURRENT APPROACH TO THE TAXATION OF PROFESSIONAL INCOME IN CANADA

Canadian professionals normally pay income tax as individuals at progressive rates ranging from 11% to 80% on their net income, net income being calculated by determining their aggregate professional income and then subtracting the costs of earning that income as permitted by the Income Tax Act. In comparing the tax position of the professional to that of other Canadian taxpayers, particular attention must be given to the professional's use of the

cash basis of accounting, to various professional's efforts to have a part, or all, of their income taxed at corporate, rather than personal tax rates, to the use of professional management companies, and finally to the question of what deductions are permitted in calculating the net income from a professional's practice.

#### A. USE OF THE CASH BASIS OF ACCOUNTING

Under present Canadian income tax law a professional may, at his option, calculate his taxable income on a cash basis of accounting in order that income and expenses are recognized only upon the receipt and disbursement of cash.<sup>17</sup> This is in contrast to the accrual basis of accounting which recognizes expenses when incurred and income when earned notwithstanding that the actual cash may be received or disbursed in another accounting period. Use of the cash basis of accounting could provide a tax saving to a professional by either allowing him to average his income over a number of years to reduce his average income tax rate or by allowing him to defer his income and therefore his income tax liability to a future year and thus realize a benefit due to the time value of money.

##### (1) Income Averaging

Many professionals experience fluctuations in



their income from year to year. Architects and Engineers are particularly susceptible to cyclical variations in the construction industry. Lawyers and accountants experience a reduction in income during a period of economic stagnation due both to fewer clients and a difficulty in collecting their professional fees and disbursements. Doctors have a more stable income flow due to the wide use of medical care, or insurance plans.

If no effort is made to smooth these irregular income flows the professional will find that in years of unusually high income the income over and above his average income will be taxed at a higher rate than if that income had been received in a lean year. The amount of this excess tax will depend on the severity of the fluctuations and will have the effect of raising the professional's average income tax rate.

The cash basis of accounting may be used to limit the income fluctuations and thus reduce the average rate of income tax. Assume that a professional person had a January 31 financial year end and that in the period from February 1 to December 1 of the current financial year he had experienced an unusually heavy income which he felt would not be repeated in the following financial year. The taxpayer would then cease rendering accounts to his clients or he could communicate to his clients that there was no need to pay outstanding

accounts before February 1 or if he had received monies from his client in the form of a retainer which was deposited in his trust account, he could wait until the first day of his next financial year to transfer the funds from his trust account into his general account at which time they would be recognized as income.<sup>18</sup> The ~~next~~ effect is to decrease the income in a prosperous year and increase it in a lower income year. If the professional was experiencing a lean year and was expecting a prosperous year the procedure would be reversed. Clearly the success of this procedure depends to a large extent on the professional's ability to forecast his future flow of income. If an error is made, it is preferable that the error tends to shift additional income to the succeeding year due to the potential deferral of tax.

## (2) Deferral of Tax

The result of applying the cash basis of accounting is that professional income is not subject to income tax until actually received. Again assuming a January 31 fiscal year end for the professional, if he does not receive payment from his client until February 1 or the monies to satisfy an account are not transferred to his general account until February 1 that income is taxable in the financial year commencing February 1. In this way the professional has the use of the cash for virtually the whole year with the

exception of amounts remitted for his quarterly tax installments or in satisfaction of his previous year's tax liability.

A similar procedure can be followed with expenses in that the latter part of the professional's fiscal year is the preferable time to make cash outlays.

The government's white paper on tax reform (1969) also recognized the potential advantages available to a professional who used the cash basis of accounting.

The government believes that the tax postponement permitted by this concession has given professionals an unwarranted advantage by comparison to the rest of Canadians, and it therefore proposes that professionals<sup>19</sup> be required to use the accrual basis.

The white paper then outlined a method of transition from the cash basis to the accrual basis and concluded with the observation:

This amount would of course be in addition to the amount of their income computed on the accrual basis and would mean that they would be taxed on the greater of a cash basis income or an accrual basis income until they catch up to other Canadian Businessmen.

This would suggest that it is government policy to tax professionals on a basis similar to other Canadian Businessmen. However, it must be remembered that a business-

man has the option of incorporating to obtain certain tax advantages which are not presently available to a professional. It is also interesting to note that Section 85F of the Income Tax Act permits farmers to use the cash basis for accounting and the government apparently does not propose to remove this concession probably because of the delayed grain sale payments to farmers. While mandatory use of the accrual basis of accounting would not greatly effect medical professionals, many lawyers will, at least during the transition period, pay significantly more income tax. This would be particularly noticeable in the case of young lawyers who had recently formed their own partnership and were having difficulty establishing a cash flow to sustain their office. The Department of National Revenue has the best of both worlds in that while the accrual basis is used to calculate the taxpayers liability, the actual tax when calculated, is payable on a cash basis.

It is interesting to note that the report on the government white paper on tax reform prepared by the Senate Committee on Banking Trade and Commerce flatly rejects the proposal that professional's income be calculated on an accrual basis<sup>20</sup> and a similar report prepared by the Common's Standing Committee on Finance, Trade and Economic Affairs recommended that the accrual basis of accounting should be adopted for receivables but not for inventory and work in progress.<sup>21</sup>

Neither the government white paper nor the subsequent Senate and Commons reports took up the suggestion contained in the Carter Commission Report that farmers and professionals whose incomes stayed under the \$10,000 level would continue to use the cash basis of accounting but would be required to convert to the accrual basis of accounting once their income exceeded that amount.<sup>22</sup> It could be presumed that this proposal was felt to be impracticable by the government.

It may be concluded that use of the cash basis of accounting offers a particular tax advantage to lawyers. In support of this conclusion it is interesting to note that both the Law Society of British Columbia<sup>23</sup> and the Department of National Revenue<sup>24</sup> have recently circulated material concerning lawyers' trust accounts and disbursements. The Law Society is concerned that lawyers adhere to the Societies rules in connection with accounting for trust monies and also with the interesting question as to whether the Department of National Revenue is entitled to audit a lawyer's trust account. Under the present Income Tax Act provision<sup>25</sup> it would appear that the trust account records of a lawyer would be subject to audit but in a recent case<sup>26</sup> the court held that the Income Tax Act provision was not sufficient to destroy the common law privilege attaching to trust records as these records are not maintained primarily for accounting purposes or to satisfy the requirements of the Income Tax Act.

While unable to determine that lawyers trust accounts are being used to reduce income tax payable the Department of National Revenue has recently circulated an Interpretation Bulletin<sup>27</sup> which states that once funds may be legally withdrawn from the trust account in satisfaction of an account they are income at that time notwithstanding that the lawyer does not in fact withdraw the funds. It is likely that the Income Tax Act will be amended to clarify the right of the Department of National Revenue to audit a trust account.

#### B. EFFORTS TO INCORPORATE THE PROFESSIONAL PRACTICE

If a professional were able to organize his practice in such a way that he would be taxed as a corporation he would have a potential tax shelter due to the low rate of corporate tax on the first \$35,000 of taxable corporate income.<sup>28</sup> One reason why a professional is unable to incorporate, is that, with the exception of the Engineering Profession Act, most professional statutes contain a restriction on professional incorporation. Even if provincial legislation were to be amended to permit professional incorporation the Department of National Revenue might take the position that the services are still being rendered by the individual professional and that he, rather than the corporation, should be taxed.

Various Canadian professionals have attempted to incorporate their practices to achieve corporate taxation status but have met with little success. The Income Tax Act definition of corporation is limited to an artificial entity deriving its status from the Federal Corporations Act or one of the provincial incorporation statutes. The Income Tax Act provides that a corporation includes an incorporated company and a corporation incorporated in Canada includes a corporation incorporated in any part of Canada before or after it becomes part of Canada.<sup>29</sup>

One of the leading cases concerning a professional's persistent efforts to incorporate his practice involved a medical doctor, Dr. Laverne C. Kindree, practicing in Squamish, British Columbia.<sup>30</sup> Dr. Kindree and his wife, who was a registered nurse, established a medical practice in Squamish and then incorporated a corporation named Squamish Holdings Limited under the British Columbia Companies Act. Some of the objects of Squamish Holdings Limited were as follows:

(a) To purchase or otherwise acquire and hold, or otherwise deal in, real and personal property and rights, and in particular land, buildings, medical and hospital equipment and supplies, furniture, supplies of all kinds, hotels, motels, trailer courts and equipment for the same.

(b) To enter into contracts or arrangements with any person, firm or

corporation or agency for the furnishing and supply of medical and surgical aid and treatment of all kinds including hospital care, house care, drugs, medicines, medical apparatus.

(e) To employ duly registered physicians, surgeons and nurses as required in order to carry out any contracts entered into by the company.

Dr. Kindree then went to great lengths to demonstrate that Squamish Holdings Limited was carrying on the practice of medicine including his entering into an employment contract with the corporation, rendering his accounts in the name of the corporation, causing the corporation to enter into an agreement to provide medical services for a local mine, having his wife and another doctor hired by the corporation, selling all his medical equipment to the corporation and causing the corporation to buy the building in which the medical clinic was located. Notwithstanding this elaborate procedure the Exchequer Court referred to the provision in the British Columbia Medical Act which prohibits persons not registered under the Act from practicing medicine.<sup>31</sup> The Medical Act does not provide that a person shall include a corporation. The Court concluded:

In my view there is no doubt whatsoever that the practice of medicine can only be carried on by a natural person involving a personal responsibility to the patient and to the governing body of the profession, such conclusion being obvious from the general tenor of the Medical Act and the code of ethics of the medical profession to which the appellant subscribed. In so



far as clause (b) of the objects of the Company purports to authorize the Company to conduct the practice of medicine it must be ineffective.<sup>32</sup>

As well as preventing the Doctor from availing himself of the low rate of corporate tax he was unable to deduct the salary paid to his wife for her services as a registered nurse.<sup>33</sup> One can appreciate the frustration experienced by Dr. Kindree in failing to rectify what he obviously felt was inequitable taxation and perhaps explains his further appeals to the Tax Appeal Board<sup>34</sup> at which time he appealed assessments relating to the years 1963, 1964 and 1965. Again the assessments arose from Dr. Kindree's unsuccessful attempts to have his Squamish medical clinic recognized as a corporation for taxation purposes. The judgment, in part, read:

The appellant is nothing if not persistent - a quality that one only can admire - as appeals by him, of the same nature, relating to the years 1957, 1958, 1959, 1960, 1961 and 1962 have already been heard and decided in favour of the Minister.<sup>35</sup>

The appeal of the assessments for these years were rejected for the same reasons as the earlier ones.

In contrast to the futile efforts of Dr. Kindree and other professionals to gain corporate taxation status, many engineers have organized their practice in corporate form and have been taxed as corporations.

The Engineering Profession Act in British Columbia and similar legislation in Alberta and Ontario permits a corporation to carry on an engineering practice. Provided that the practice is organized so that the corporation and not the individual is carrying on the practice, the corporation may file a corporate tax return and the individual engineer is only taxed on the salary, dividends or directors fees received from the corporation.<sup>36</sup>

Due to the engineer's success in attaining corporate tax status and the existing case law it may be concluded that the failure of other professional groups to achieve corporate tax status results from the failure of their professional statutes to make any provision for the practice of their profession by a corporation or in some cases the outright prohibition against such practice.

#### D. ALLOWABLE EXPENSES IN CALCULATING THE PROFESSIONAL'S TAXABLE INCOME

Professionals are permitted to deduct the expenses incurred to earn their professional income in calculating their taxable income. The type and amount of expenses that may be deducted is important in determining the professional's ultimate liability for income tax.

The Income Tax Act contains a general prohibition

against deducting any expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from property or a business of the taxpayer.<sup>37</sup> Assuming that an expense was for the purpose of earning income it is subject to the further restriction that it must be reasonable in the circumstances.<sup>38</sup>

While there are a myriad of cases concerning the interpretation of Sections 12(1)(a) and 12(2) of the Income Tax Act it is hard to determine any rules of general application. It would be safe to predict that a solicitor in private practice might deduct a car allowance of up to seventy-five dollars per month, his home telephone bill, a club membership charge and the monthly account resulting from his use of that club, without having to substantiate the expenses. There are certain questionable practices such as charging a bottle of liquor on a club account, having the firm purchase seasons tickets for hockey or football games for personal use, or putting all one's personal mail through the firm mailing machine. These practices border on tax evasion, are impossible to measure, and will not be considered further in this thesis. It would also be possible for a sole practitioner or small firm that received a cash payment for their services to pocket the funds and possibly fail to declare such receipts for income tax purposes. However, without having to resort to these extremes, it is fair

to conclude that a taxpayer receiving professional income is able to deduct certain expenses from his income and not include certain emoluments in his taxable income and that similar advantages would not be available to a taxpayer receiving income from an office or employment.

#### D. USE OF A MANAGEMENT COMPANY

A professional, or professional partnership, may incorporate a limited company which would own all the assets required in the practice, employ all the professional and clerical employees of the partnership and perhaps purchase and collect the accounts receivable from the professional or partnership. The shares in this management company would be owned by the professional or professionals. There are several advantages in establishing a management company.

First by segregating all the operating expenses into a separate entity it permits the calculation of the total overhead of the partnership thereby facilitating an analysis of income and the final division of net income between partners. The management company would have a separate set of books and separate bank account and would in effect sell its services to the professional practice.

Second there is a potential tax advantage in

establishing such a management company. If the management company generates taxable income, the marginal rate of tax on the first \$35,000 of such taxable income will be 21%.<sup>39</sup> The marginal rate of tax of the professional will probably be significantly higher than the low rate of corporate tax. While the incorporation of a management company presents a potential tax saving the Department of National Revenue has refused to allow unreasonably large payments to a management company in calculating a professional's income tax liability. In one case involving a prominent Vancouver lawyer, a fee of \$9,500 was paid by the practitioner to the management company which administered his law office.<sup>40</sup> As the practitioner in fact carried out the administrative services personally and received no salary from the management company, the expenses claimed by the taxpayer was disallowed as, in the Court's opinion its sole purpose was to artificially reduce the tax payable on the appellant's professional income.

The Department of National Revenue now examines the amount paid by the professional to the management company in relation to the services received and compares those charges with charges prevailing in the area for office accommodation, secretarial and accounting services, equipment rentals, etc. to determine whether the payments to the management company represent an effort by the individual taxpayer to divert part of his professional income through a

corporate entity to take advantage of the low rate of corporate tax.

E. EVALUATION OF THE CURRENT APPROACH TO THE TAXATION OF PROFESSIONAL INCOME IN CANADA

While most professionals have been unable to incorporate their practices, some measure of tax relief has been obtained by organizing the professional practice to include a management company, using the cash basis of accounting to defer or average income and by claiming all allowable expenses as a deduction from gross professional income.

The measures become less effective in reducing the burden of income tax as the professional's annual income rises to forty or fifty thousand dollars. Other procedures may be investigated such as the purchase of rental real estate which, through a combination of capital cost allowances and mortgage interest, may produce a net loss which may be offset against the professional's other income thereby reducing his income tax liability, at least temporarily.

It must be concluded however, that a Canadian lawyer or doctor who receives a high income is at a tax disadvantage in comparison to a professional engineer who is permitted to incorporate his practice. The lawyer or doctor

faces a similar disadvantage in comparison to other Canadian businesses which may be carried on in the corporate form. It must be recognized that professionals have a greater latitude than taxpayers receiving income from an office or employment in the amount and type of expenses that they may deduct from their professional income. Should all professionals be permitted to incorporate or should some other tax relief be provided for this class of taxpayer?

### III. AN ALTERNATIVE APPROACH TO THE TAXATION OF PROFESSIONAL INCOME - THE PROFESSIONAL CORPORATION

Having reviewed the taxation of professional income under existing statutory provisions and the procedures presently available to professionals to minimize their income tax liability, the concept of professional incorporation, which presents the main alternative approach to the existing tax treatment of professional income, will be considered.

Most American states now permit professionals to incorporate and to be taxed as corporations and, while the British Columbia government had subsequent misgivings, at one time, they too felt that professionals should be permitted to incorporate.<sup>41</sup>

To properly assess this alternative approach to the taxation of professional income, attention must be given to the ethical problems associated with professional

incorporation, professional incorporation in other jurisdictions, the approach of the Department of National Revenue to the taxation of professional corporations, the circumstances surrounding the British Columbia Professional Corporations Act, incorporation procedures that must be followed, and finally, the potential income tax advantages resulting from incorporation of the professional practice.

#### A. THE ETHICAL QUESTION OF PROFESSIONAL INCORPORATION

Incorporation presents certain ethical problems for the professional. To obtain the tax benefits of professional incorporation, it must be demonstrated that the corporation employs the professional, renders the account, and performs the professional service. This procedure is contrary to the traditional concept of professionalism, which is based on a fiduciary and confidential relationship between the professional and his client or patient. Item 3(10) in the Canons of Legal Ethics which provide general guidelines for solicitors conduct states:

S4(10) He should avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. He should always bear in mind that the profession is a branch of the administration of justice and not a mere money-getting trade.<sup>42</sup>



Does the lawyer employed by a professional corporation face a conflict of interest between his employer and his client when it comes to questions concerning the number of hours required by a particular matter compared with the professional fee it would produce for the corporation?

One of the characteristics of a profession is that its members discipline themselves. This disciplinary function includes the power to inquire into the conduct of one of their members and disbar, strike off the rolls or take similar appropriate measures to prevent that person from continuing the professional practice. Any legislation permitting the incorporation of professional corporations must also provide that such entities are in some way made subject to the disciplinary powers of the profession's governing body.

It has similarly been argued that any professional incorporation legislation should include a prohibition against the sale of the shares of the professional corporation to a person not legally qualified to practice that profession,<sup>43</sup> and also a provision that the liability of the professional corporation be unlimited. While any limitation of liability for a professional would provide a safeguard against negligence actions, it would violate one of the basis tenants of professionalism; that the professional remain personally

responsible to his client. It has been argued that professionals should be permitted to limit their liability to some degree.<sup>44</sup> Damage awards in professional negligence actions are often substantial and may exceed the policy limits of available liability insurance. For example, a solicitor practicing in British Columbia must carry two hundred thousand dollars of public liability insurance arranged through a Law Society sponsored group insurance scheme. It is often difficult to obtain excess coverage. While it is disturbing to consider that financial ruin may result from the error of a partner or employee it is perhaps a necessary responsibility associated with professional practice. Many professionals recognize that such a statute would provide more equitable taxation of their professional income including corporate tax rates, the possibility of tax and estate planning, profit sharing and pension plans, and, to gain these advantages professionals might elect to forego limited liability.

In the alternative a system of bonding similar to that provided by the Real Estate Act<sup>45</sup> would provide a continuing safeguard for the public interest while permitting professionals to place a ceiling on their potential liability.

#### B. PROFESSIONAL CORPORATIONS IN THE UNITED STATES

Professional incorporation is presently permitted

in forty-two of the American states<sup>46</sup> and, after a series of legal skirmishes, the Internal Revenue Service is now recognizing the Professional Corporations, or Professional Service Corporations as they are more commonly known in that jurisdiction, for taxation purposes.

Professionals in the United States were in a preferred position vis a vis corporate tax status due to the expanded definition of corporation in the Internal Revenue Code. A corporation is defined to include associations, joint stock companies, insurance companies and certain types of trusts as well as artificial entities to which the Canadian definition of corporation is limited.<sup>47</sup> Taking advantage of this broad definition of corporation in the Internal Revenue Code, professional partnerships attempted to gain corporate tax status and in the leading case of *Morrissey v. Commissioner*<sup>48</sup> the Court decided that to fall within the definition of corporation an organization must possess: (1) associates (2) the objective of carrying on business and dividing profits (3) continuity of life (4) centralized management (5) limited liability for the debts of the organization and (6) free transferability of interests in the organization. Following the *Morrissey* case many professional persons attempted to organize their practice so as to conform to these characteristics. The Internal Revenue Service moved in 1969 to prevent professional partnerships from filing

corporation tax returns by passing regulations under Section 7701 of the Internal Revenue Code providing that in order for a partnership to be recognized as coming within the definition of corporation for tax purposes it must have associates and the objective of carrying on business and dividing profits and at least three of the other four characteristics set out in the Morrissey decision.<sup>49</sup> From 1959 to 1962 approximately twenty state legislatures enacted statutes permitting either professional incorporation or permitting professionals to organize their practice to conform to the treasury regulations. In an effort to nullify the state legislation, the Internal Revenue Service subsequently announced further regulations<sup>50</sup> which removed any possibility of corporate tax status to professional associations or corporations.

These latter regulations were vigorously opposed by various professionals and the decisions in resulting litigation struck down the treasury regulations due to their contravention of Section 7701 of the Internal Revenue Code.<sup>51</sup>

Given the court pronouncements concerning Section 7701 of the Internal Revenue Code and the state legislation providing for professional incorporation, corporate tax status is now available to most American professionals providing their practice is organized in the appropriate manner.

## C. PROFESSIONAL INCORPORATION IN CANADA

Prior to the enactment of legislation by the Province of British Columbia which specifically permitted all professionals to incorporate their practices there were both direct and indirect factors keeping corporate tax status from Canadian professionals.

In the case of most professions restrictions on incorporation appear in either the specific statutes establishing the profession or in the rules set down by the profession's governing body. For example S.75 of the Medical Act RSBC 1969 C.239 provides that:

S.75 Without first obtaining the written consent of the executive committee,

(a) no member of the College shall carry on the practice of medicine or surgery except in his own proper name; and

(b) no association of two or more members of the College shall carry on the practice of medicine or surgery except in the proper names of one or more of the members of such association.

This section clearly prohibits the practice of medicine by a corporation except with the express approval of the Executive Committee of the College of Physicians and Surgeons.

The Legal Professions Act RSBC 1969 Chapter 214

also includes a prohibition against professional incorporation:

S.72 No corporation and no person other than a member of the Society in good standing shall, subject to the Inferior Courts Practitioners Act, engage in the practice of law, except that

(a) a person may act on his own behalf in a proceeding to which he is a party;

(b) as permitted by the Inferior Courts Practitioners Act;

(c) students-at-law and articled clerks duly enrolled as such may appear in Chambers or before a master, referee, registrar, or examiner to the extent permitted by the practice in that behalf;

(d) upon such terms as the Benchers may prescribe, a barrister of another Province, which affords the like privilege to barristers of this Province, may, in special circumstances and with respect to a particular cause or matter, be permitted to appear as counsel in the Courts of this Province, notwithstanding that he is not a member of and has not paid any fee to the Society.

One exception is the Engineering Profession Act which permits the incorporation of an engineering practice by virtue of the following provision:

S.3(6) Nothing in this Act shall be so construed as to prevent a corporation which has on its active staff professional engineers who directly supervise and assume full responsibility for all work or service undertaken by such corporation of the kind described in the definition of "practice of professional engineering" in Section 2 from undertaking such work or service and recovering proper fees and remuneration therefor.<sup>52</sup>

In British Columbia many engineering practices are incorporated and presumably file corporate tax returns.

As is evident by the previous discussion of the numerous unsuccessful appeals by Dr. Kindree, attempts by Canadian Professionals, other than engineers, to incorporate their practices and to file corporate tax returns have been unsuccessful. The Department of National Revenue assesses the professional taxpayer as an individual rather than as a corporation on the rational that the professional services are being provided by an individual and not by a corporation. The Tax Appeal Board and the Exchequer Court have in most instances upheld the Department of National Revenue's assessments of professionals on an individual basis. The reasons for judgment have pointed to the prohibitions against incorporation contained in Provincial professional statutes. Other reasons for refusing to recognize the corporations for tax purposes were that the corporate names of the alleged corporate practitioner were not displayed outside the professional's office or shown in the telephone directory and accounts were rendered in the professional's name rather than in the corporation's name.<sup>53</sup> In other words the Tax Appeal Board feels that the procedure amounts to an assignment by the professional to a corporation of his professional income after it has been earned. In view of the present statute and case law it is fair to conclude that with the

exception of an engineer, professionals can not carry on their practice in corporate form.

D. PROFESSIONAL INCORPORATION IN BRITISH COLUMBIA - THE PROFESSIONAL CORPORATIONS ACT SBC 1970 C.37

On April 1, 1970 the British Columbia Legislature gave third and final reading to the Professional Corporations Act.<sup>54</sup> As will become apparent it was suitable that final reading was given to this bill on April 1, better known as "April Fool's Day". British Columbia was the first Canadian province to enact legislation permitting the incorporation of a professional practice and also the first to suspend such legislation. A chronological review of the events following the enactment of the Professional Corporations Act in April 1970 is worthy of note. This Act was conceived and brought into law in a period following the tabling of the White Paper on Tax Reform in the Canadian House of Commons. Present and contemplated government spending programs obviously will require the raising of additional tax revenues. Clearly legislation permitting professionals to incorporate would have significant revenue implications, although the Department of National Revenue has not estimated the loss of tax revenue which would result from corporate tax status for Professionals. It is reasonable to assume that if one province permitted professional incorporation the remaining provinces would likely enact similar legislation to avoid the migration



of their professionals to a newly established provincial tax haven. It has been reported that the Government of the Province of Alberta was planning the introduction of similar legislation in its 1971 session and that the Government of the Province of Ontario was also contemplating professional incorporation legislation.<sup>55</sup> In view of the potential revenue implications of professional incorporation legislation, credibility is given to the speculation by various newspapers that the Minister of National Revenue, The Honourable Edgar Benson prevailed upon members of the British Columbia Government to eliminate this possible tax advantage to professionals.<sup>56</sup>

While it is not apparent whether it was in direct response to representations made by the Federal Government, it is clear that on December 10, 1970 Order-in-Council 4147 was passed pursuant to S.29 of the Income Tax Act SBS 1962 Chapter 27; which Order-in-Council provided as follows:

That, pursuant to Section 29 of the Income Tax Act, 1962, a corporation incorporated under the Professional Corporations Act shall be deemed not to be a corporation, as defined in the Income Tax Act, 1962.

While the obvious intention of Order-in-Council 4147 is to remove any potential tax advantage to professionals by deeming professional corporations to be individuals, its validity is open to question due to its purported amendment of the British Columbia Income Tax Act<sup>57</sup> which amendment could,

in the opinion of some observers,<sup>58</sup> only be validly made by the provincial legislature. Even if valid, it could be argued that due to the allocation of legislative powers under the British North America Act the Order-in-Council could only affect that portion of income tax which, while collected by the Federal Government is payable to the Provinces under the Dominion-Provincial Tax Sharing Agreement. It is submitted that any changes in taxation under the Federal Income Tax Act requires federal legislation.

Even before the passage of the Provincial Order-in-Council deeming the professional corporations to be individuals there were doubts as to whether the Department of National Revenue would recognize Professional Corporations for income tax purposes. One supervisor in the Vancouver District Office of the Department of National Revenue indicated that the Professional Corporations would be recognized as corporations by his department.<sup>59</sup> A request for information as to the status of a professional corporation brought the response shown in Exhibit A from the Penticton District Tax Office of the Department of National Revenue. Clearly their opinion hinges on the manner in which the professional corporation was organized and carried on business.

Once the professional corporations were deemed to be individuals for purposes of the British Columbia Income Tax Act their tax status took on a new uncertainty particularly

due to the lack of any definite ruling from the Department of National Revenue. Resulting from this uncertainty was the interesting theory that the effect of the provincial Order-in-Council would be to decrease the corporate income tax payable by a professional corporation. At present, a corporation pays a tax under the Provincial Income Tax Act equal to 10% of its income earned in British Columbia.<sup>60</sup> An individual resident in British Columbia at the end of the taxation year pays a tax under the Provincial Income Tax Act equal to 28% of the basic tax payable under the Federal Income Tax Act.<sup>61</sup> This method would be used to calculate the provincial tax payable by a British Columbia professional corporation since it is deemed to be an individual. The Federal basic tax payable by a corporation is 18% of its first \$35,000 of taxable income plus 47% of the balance of its taxable income and this method would be used to calculate the basic tax of a professional corporation if it were in fact recognized as a corporation for taxation purposes by the Department of National Revenue. Applying the Provincial Income Tax Act to the federal method of calculating the basic tax would mean that a British Columbia professional corporation would pay to the Province of British Columbia approximately 5% of its first \$35,000 of taxable income and 13% of the balance. The application of the 5% and 13% rates of corporate income tax rather than the straight 10% rate would have resulted in a tax saving for every professional corporation whose income did not exceed approximately \$91,000 per year.

While the Provincial Order-in-Council of December 10, 1970 was ambiguous, it was clear that the British Columbia Government and perhaps the Federal Government intended to remove any tax advantages expected from professional incorporation. As the British Columbia government offered to refund the incorporation fees to any professional who had incorporated and who was prepared to liquidate his professional corporation and return the Certificate of Incorporation to the Registrar of Companies for cancellation,<sup>62</sup> it was clear that the Provincial Government had substantially altered its policy in regards to corporate tax status for professionals.

It was therefore not unexpected that the annual government omnibus bill, provided, among other things, that the Professional Corporations Act should be suspended until July 1, 1972 or until re-enacted before that time by cabinet order-in-council or by the legislature.<sup>63</sup>

While the Professional Corporations Act was law for less than twelve months most of the professional corporations incorporated under the Act were incorporated between July 31, 1970 and December 11, 1970, the day following the Order-in-Council deeming such corporations to be individuals for purposes of the British Columbia Income Tax Act. There were many well known British Columbia professionals who incorporated and judging from the capitalizations of these corporations the professional's legal and accounting

advisors had conceived many tax and estate planning schemes. A summary of all incorporations under the Professional Corporations Act is included in Appendix B of this thesis and particular attention is drawn to incorporation number sixty-five which has a capitalization of approximately one million dollars and various other incorporations with large or unusual capitalizations.

Why did only 240 professionals incorporate when there were so many eligible under the terms of the Act. One likely explanation for this seeming reluctance is that many professionals felt that any tax advantages would be short-lived due to the pending revisions to the Canadian taxation system which had already been outlined in the white paper on tax reform, tabled in the federal parliament some three months before the Professional Corporations Act was introduced into the British Columbia Legislative. The federal white paper proposed, in part, that the low rate of corporate tax be eliminated, and that the personal and corporate taxes be integrated. The proposal to gross up dividends and give credit for corporate taxes will mean that the effective rate of corporate tax paid by the corporation will be the marginal rate paid by its shareholder. If this proposal was to be implemented no incentive would remain to retain earnings in the corporation for investment. In fact it would be wise to distribute all earnings within two and one half years from

the end of the corporation's taxation year so that the shareholder might be given credit for the corporation tax paid. Again the abolition of the low rate of corporate tax was only a proposal, and if implemented, it would take effect over a five year period and some discussion ensued concerning other forms of incentives for small businesses.

However it is logical to assume that many professionals adopted a skeptical attitude pending clarification of federal tax policies and no doubt these same persons felt vindicated when the Professional Corporations Act was suspended.

While the British Columbia Professional Corporations Act is not presently available to professionals who wish to incorporate, it does provide a useful example to analyze the potential tax advantages to be gained by a professional through incorporation. It must be remembered that this statute is temporarily suspended and could be reinstituted at any time by Order-in-Council.

Procedures to incorporate under the British Columbia Professional Corporations Act will now be reviewed followed by a detailed summary of the potential tax benefits resulting from professional incorporation.

#### E. INCORPORATION PROCEDURES UNDER THE PROFESSIONAL CORPORATIONS ACT

To incorporate a professional practice, the professional association of which the professional is a member must sanction the incorporation. Each profession in British Columbia handled this matter in a different way. For example the Law Society of British Columbia would, on request, advise the Provincial Registrar of Companies that an applicant for incorporation is a member in good standing of the Society. The College of Physicians & Surgeons of British Columbia required that a physician applying for incorporation complete an information form, a copy of which is shown as Exhibit B. The Institute of Chartered Accountants required its members to confirm that they would continue to be bound by, and the corporation would be bound by, the regulatory jurisdiction of the Institute of Chartered Accountants.

Once the necessary consent has been obtained a constitution, by-laws, notice of registered office, and a list of the persons appointed by the subscribers to act as first directors of the corporation must be prepared and sent to the Registrar of Companies in Victoria. The writer incorporated under the Professional Corporations Act and the constitution, by-laws and other incorporating documents are attached as Appendix C. The form of constitution is set out in Schedule A to the Professional Corporations Act which also provides that the objects of the corporation must be limited to the practice of the particular profession in respect of which it was incorporated. "Limited" or "Ltd."

may not appear after the name of the corporation.<sup>64</sup> While the Professional Corporations Act provides that Table "A" of the Companies Act shall be used as the basis for the by-laws of the professional corporation<sup>65</sup> there are several provisions not included in Table "A" that should be contained in the professional corporations by-laws. The by-laws should permit the corporation to pass a resolution by having one director give his written consent. Members of the Board of Directors must be limited to members of the particular profession,<sup>66</sup> there must be no joint shareholdings,<sup>67</sup> proxies can only be given to other members of the professional corporation concerned,<sup>68</sup> and all share certificates issued by the professional corporation must bear the following notation "The shares represented by this Certificate shall not be transferred to a person who does not practice the profession in respect of which this Corporation is incorporated."<sup>69</sup> and finally the corporation is not limited to fifty members.<sup>70</sup>

A professional corporation is no more difficult to incorporate than any other limited company and the fees paid to the Registrar of Companies are the same as for a normal incorporation.

Once the government announced the suspension of the Professional Corporations Act it restated its policy of returning the incorporation fees to persons who wished to



surrender the certificate of incorporation. The director of the corporation was required to swear a declaration that the corporation was not carrying on business and had no liabilities. The writer followed this procedure and had his incorporation fees refunded. These documents are also included in Appendix C.

## F. POTENTIAL TAX ADVANTAGES THROUGH PROFESSIONAL INCORPORATION

### 1. Availability to the Sole Practitioner

In British Columbia a minimum of two members are required to incorporate a private corporation while five members are required in the case of a public corporation.<sup>71</sup> In order to avoid "shot gun" professional partnerships the Professional Corporations Act provides for corporations consisting of only one member who will be the sole director, officer and shareholder.<sup>72</sup> This would clearly be a way to avoid long and tedious directors meetings. For the first time we have a truly one-man corporation with all the associated tax advantages.

### 2. Business and Financial Flexibility

While at first appearance a professional corporation is limited in its activities to the practice of the particular profession for which it was incorporated,<sup>73</sup> the Act also

provides that a professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment, or own, lease, sell, dispose of, or otherwise deal in real or personal property for the purpose of carrying on the business of the corporation.<sup>74</sup> The professional corporation could own a building containing the professional office and could lease automobiles to be used by its employees and it could perhaps be successfully argued that the corporation's cash reserves could be invested in rental real estate which due to interest payments and capital cost allowance may produce a net loss which could be offset against the corporations professional income. Any dividends received by a professional corporation from another tax paying Canadian corporation will not be subject to tax.<sup>75</sup>

It is thought by many advisors to be advantageous for accounting reasons to maintain the accounts of the professional corporation separate from the professional's personal accounts. It is no longer acceptable in this day and age of medicare payments, annual audits, and high professional income for a professional not to maintain proper accounting procedures and controls. It is also more convenient to only be involved in valuing and transferring the shares of the professional corporation on the death of the professional rather than having to transfer each of his assets individually.

### 3. Pension Plan Benefits

A professional who incorporates under the Professional Corporations Act could take advantage of substantial pension plan benefits that would not be available in the same manner to his brother professional who is a member of a partnership or is a sole proprietor. If the professional corporation contributes to a qualified pension plan on the professional's behalf it may deduct the contribution from its taxable income up to a limit of \$1,500. The professional is taxed on those funds when actually received from the pension fund resulting in a deferral of tax and probably a lower rate of tax applied to the funds. The Department of National Revenue is apparently refusing to accept for registration pension plans that are primarily for the benefit of shareholder employees.<sup>76</sup> If this is the case it would curtail this advantage of professional incorporation.

### 4. One Time Tax Saving in Year of Incorporation

As with any corporation, a professional corporation is able to select its first year end.<sup>77</sup> If the fiscal period of the corporation commenced July 1 and the professional was employed by the corporation on that date his taxable income for that calendar year during which his employment commenced could be controlled by the amount of salary the corporation

paid him in the period from July 1 to December 31. By paying a nominal salary for the balance of the calendar year the income earned by the professional in the first six months of the year of incorporation would be subject to a lower marginal rate of tax.

#### 5. Lower Average Rate of Tax

The income tax rate structure applying to individuals is progressive, ranging from 11% on the first \$1,000 of taxable income up to 80% on all income over \$400,000<sup>78</sup>. Corporations are subject to a split rate of income tax, being taxed at a rate of 18% on their income up to \$35,000 and at a rate of 47% on all of their income in excess of \$35,000. While it can be quickly calculated that a married individual with two children aged twelve and fourteen would experience a marginal rate of tax in excess of 21% once his income exceeded \$7,000 this does not mean that he would obtain an immediate tax benefit by incorporating. One must compare the individuals average rate of tax with the low corporate rate of tax and the 21% rate can only be used as a comparison if no income is paid out to the individual as salary or dividends. If most of the corporation's income is to be paid through to the individual there is very little advantage in incorporation vis a vis the low rate of tax due to the double taxation feature.

#### 6. Deferred Profit Sharing Plan

The professional corporation may deduct up to \$1,500 from its taxable income in conjunction with monies paid to a trustee of a deferred profit sharing plan established for its employees. It is not known whether the Department of National Revenue is discouraging such plans established for the exclusive benefit of shareholder employees but this may be their practice. Any deduction claimed by the corporation for contributions to the deferred profit sharing plan must be reduced by amounts contributed to an employee's pension plan.

#### 7. Dividend Tax Credit

When the corporation pays dividends to its shareholders they may reduce their tax otherwise payable by 20% of the dividend received. This is intended to offset the double taxation of these funds and, for a professional corporation with a significant amount of retained earnings whose only shareholder retires, it means that these retained earnings may be paid out to the shareholder over a number of years and attract little if any tax due to the 20% dividend tax credit.

#### 8. Stock Dividend from Tax Paid Undistributed Income

Under the provisions of Section 105 of the Income

Tax Act the Professional Corporation could distribute one half of its income each year in dividends and, in a subsequent taxation year, could elect to pay a 15% tax on an amount equal to the dividends previously paid thereby creating tax paid undistributed income from which a stock dividend comprised of redeemable preference shares could be paid. When these shares are redeemed, the redemption price would be paid free of tax to the shareholders. This procedure is clearly attractive to shareholders subject to a high marginal rate of tax.

#### 9. Group Term Life Insurance Policy

The corporation may deduct the cost of premiums for a group term life insurance policy not exceeding \$25,000<sup>79</sup> for the benefit of its employees. Providing that the policy conforms to the requirements of the Income Tax Act<sup>80</sup> it would not give rise to a taxable benefit in the hands of its employees.<sup>81</sup>

#### 10. Loans to Officers

Section 8(2) of the Income Tax Act permits the corporation to borrow monies and deduct the interest from its taxable income and then to lend the monies interest free to its officer-shareholder to assist him in the purchase of a home or automobile. Some reasonable repayment provision

must be agreed upon between the corporation and its officer. The loans described in Section 8(2) of the Income Tax Act are an exception to the normal rule that such loans will give rise to a deemed dividend in the hands of a shareholder. A general medical practitioner could use this provision to finance the purchase of an automobile. Other professionals may have difficulty demonstrating that an automobile was used exclusively in the performance of the duties of his office or employment. A record should be maintained by the professional so that if called upon he can show what proportion of the time the car was used in connection with his employment. There is no requirement that any part of the home be used in conjunction with the employment.

#### 11. Unpaid Remuneration

A professional corporation operating on an accrual basis of accounting could accrue its employees salary for up to three years. This would permit the corporation to deduct the salary in the year it is earned but the employee will defer his tax liability for up to three years as the salary is not taxable until actually paid.<sup>82</sup>

#### 12. Death Benefit

There may be an agreement between the professional and the corporation that upon his death a death benefit will

be payable to his widow. A portion of this payment equal to the lesser of \$10,000, or one year's salary, is a tax deductible expense for the corporation and is not subject to personal tax in the hands of the widow.<sup>83</sup>

### 13. Retiring Allowances

In recognition of a professional's long service to a corporation he may be paid a retiring allowance which is deductible by the corporation in calculating its taxable income. The allowance will be taxed in the employee's hands in the year that it is paid. There is no specific provision for the deduction of retiring allowances in the Income Tax Act but in one author's<sup>84</sup> opinion as long as such payments are reasonable they may be deducted.

### 14. Goodwill

When the corporation is initially organized the professional will transfer his assets including the building where he carries on his practice, his equipment, accounts receivable and work in progress and all his office records such as patients records, clients files or previously prepared plans. These latter assets are particularly valuable because they are the physical evidence of the goodwill that the professional has built up during the course of his



practice. This goodwill can presumably be paid for by the corporation in the form of preferred shares or a promissory note which can be redeemed or repaid at a later date. The effect is that funds may be distributed by the corporation to the professional without his incurring any tax liability.

Presumably the Department of National Revenue would challenge an unreasonable valuation on the professional's goodwill and in cases of doubt the proposed goodwill valuation should be referred to the Department of National Revenue for their approval.

#### 15. Employment of Spouse

It is not uncommon, particularly in the case of medical practitioners, that the professional's wife will be actively employed in the practice as nurse, receptionist, bookkeeper or stenographer. Even in situations where the wife is a bona fide employee in a professional practice the professional husband is unable to deduct the wife's salary. If the professional's sister was employed to do precisely the same work her salary would be deductible by the professional brother. It was the application of this provision of the Income Tax Act which produced a harsh result in *Laverne C. Kindree v. MNR*.

While S.21(2) of the Income Tax Act was clearly

enacted to prevent income splitting resulting from a taxpayer paying a salary to a spouse who does little or nothing in return, its blanket prohibition also prevents the deduction of salary paid by the professional to a spouse in return for bona fide services.

By having the corporation employ the professional and spouse no such problem arises as both salaries are a deductible expense for the corporation and the salaries are taxable in the employee's hands.

#### G. TAX PROBLEMS WITH THE PROFESSIONAL CORPORATION

##### 1. Deemed Associated Statutes

It may be advisable for each professional in a partnership to incorporate separately and to continue the professional association as a partnership of professional corporations. This procedure should definitely be followed where the professionals are presently sharing office space and some services but are otherwise carrying on separate practices. Even under these circumstances it is possible that the Minister of National Revenue may argue that one of the main reasons for having two professional corporations is to take advantage of the low rate of corporate tax on the first \$35,000 of taxable income<sup>85</sup> of each corporation and therefore

the two or more corporations should be deemed to be associated with each other which would restrict the two or more corporations to claiming the low rate of corporate tax on a maximum of \$35,000 of income.<sup>86</sup> To avoid associated status the professionals should maintain separate books, not pool their income, maintain separate ownership of their equipment and use separate distinctive stationery.

## 2. The Corporation Must Carry on the Practice

It is important that no one have the impression that simply by registering certain documents with the Registrar of Companies in Victoria that next year's income tax bill will be halved. On the contrary the actual incorporation is only the first step. It is then necessary to prepare an employment contract between the professional and the corporation, sell the professional's total present undertaking to the corporation, and obtain stationery so that all billing and correspondence may be in the corporation's name. The corporation's name should be prominently displayed outside the professional office, it should be listed in the telephone directory and the bank accounts should be kept in the corporation's name. The professional must remember that he is strictly in the position of an employee and must keep his personal financial transactions quite separate from those of the corporation.

#### IV. RECOMMENDATIONS

Having now reviewed the current tax treatment of professional income in Canada, several features of our income tax system which unfairly discriminates against the professional have been identified. Enacting the Professional Corporations Act was an attempt to alleviate these tax inequities, but posed definite ethical problems and more significantly tended to be labelled as a tax "plum" for professionals thus raising new problems of equity in relation to other classes of taxpayers. As a general recommendation, professional incorporation should not be permitted, but certain changes to our tax system should be effected to reconcile the disparity between the tax treatment of professional and other business income.

The first recommendation is that Section 21(2) of the Income Tax Act which reads:

Where a person has received remuneration as an employee of his spouse, the amount thereof shall not be deducted in computing the spouse's income and shall not be included in computing the employee's income

should be amended by the addition of the words:

...except when such remuneration was received by the spouse for bona fide services rendered to the spouse

paying such remuneration.

This amendment would prevent a repetition of the problem faced by the Squamish Doctor who was unable to deduct the salary he paid to his wife for her services to his professional practice as a registered nurse.

The second recommendation is that all taxpayers should have the option of either claiming expenses incurred on post secondary education as a deduction from their taxable income in the year that they are incurred or capitalizing them to be deducted from future income. Taxpayers in the professions correctly argue that their earning years are compressed and due to our progressive tax rates their professional income is taxed at a higher average rate of tax.

The third recommendation is that an option be provided in the Income Tax Act whereby professionals could be taxed at corporate rates. In other words their professional income would be deemed to have been the income of a fictitious corporation and then taxed at corporate rates. In addition this fictitious corporation could conduct itself as a regular corporation in regard to making loans to the professional, establishing pension plans, and all other mechanisms presently available to corporate taxpayers. The professional would, in addition, file a personal tax return, declaring salary and dividends received from the fictitious

corporation. The alternative to amending the Income Tax Act in this manner is to enact legislation in each province permitting professional incorporation. This is undesirable as it would be difficult to achieve uniform legislation in all provinces, it may create friction with other classes of taxpayers and it raises ethical problems. It is not desirable that a corporation remove your appendix or draft your will. The patient-doctor, lawyer-client and other professional relationships are vital in our society and should be preserved.

The more important question is why should professional income be taxed as corporate income, and what about the professional who receives income from an office or employment? There has always been a fundamental distinction in our Income Tax Act between business income and income derived from an office or employment. Tax concessions have been granted in the case of business income to encourage the establishment of Canadian business, to permit small business to compete with larger businesses, and to provide a means whereby small business may accumulate capital to acquire operating assets. The establishment of a professional practice requires an outlay of capital for library, instruments, office furnishings and a continuing fund of working capital is needed to provide for accounts receivable, salaries of associates and employees and numerous other day to day expenses. Engineers are allowed to incorporate, as are

plumbers, pharmacists, management consultants, gardeners, and most other occupational groups. Professionals face the same problems as other business enterprises and should receive similar tax treatment. The effect of this proposal is shown in Exhibit C which outlines the potential tax saving resulting to a professional who is taxed at corporate rates. The tax saving is largely dependent on what proportion of the corporation's income is distributed to the professional. There is clearly an incentive to retain monies in the corporation and these funds would presumably be utilized in the practice.

Professionals receiving income from an office or employment are not generally required to invest their own funds in income producing assets, nor do they generally face the same financial risk and can not justify similar tax treatment.

The fourth recommendation is that professionals be permitted to use the cash basis of accounting but that measures be taken to prevent them from using artificial cash handling procedures to avoid or postpone income tax.

## V. CONCLUSION

The question of the taxation of professional income is a question of equity. Is it fair to allow a

pharmacist to incorporate but not a doctor, a private investigator but not a lawyer? It must also be remembered that most professions have the power to control entry into their profession and to set their fee scale.

To promote equity and rationalize our tax system professional income must be treated the same as all other business income. If necessary another branch of government might investigate the regulation of professional fees.

As long as professionals do not achieve equitable tax treatment and continue to have the discretion to set their own fees they will attempt to maintain a satisfactory after tax income. This can only rebound to the disadvantage of the general public in the form of higher professional fees.



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APPENDICIS

- A. The 1971 Income Tax Legislation
- B. Incorporations under the Professional Corporations Act SBC 1970 c.37
- C. Professional corporation - Incorporating Documents and Surrender of Certificate of Incorporation

## APPENDIX A

### THE 1971 INCOME TAX LEGISLATION

The federal government's tax reform measures were presented to the Canadian Parliament by the Honourable Edgar J. Benson, Minister of Finance, on Friday, June 18, 1971. While to a considerable extent the proposals contained in the previous government white paper have been implemented there are a number of departures that are significant in relation to the taxation of professional income.

The proposal to integrate the income of a corporation with that of its shareholders has been dropped. Dividends paid to a shareholder will ~~not~~ be entitled to a 33-1/3% tax credit, but the tax credit will be added to the dividend and included in taxable income. A Canadian controlled private corporation will be taxed at 25% on the first \$50,000 of business income. This low rate of tax will cease to apply and a corporation has accumulated taxable income of \$400,000. The accumulation is calculated by adding each year's taxable income after the implementation of the new Act and by deducting four-thirds of taxable dividends paid to shareholders.

The new bill requires taxpayers in the professions to report income and expenses on an accrual basis for fiscal years ending after December 31, 1971. Work in progress will

not be brought into income except at the option of the taxpayer. Accounts presently outstanding, which under the present tax legislation have not yet been included in income, will be brought into income over a number of years so as to avoid an unnecessary tax burden in the first year.

What is the effect of the proposed tax legislation on the recommendations contained in this thesis? First the accrual basis of accounting required under the proposed Income Tax Act is in fact a quasi-accrual method and will not create undue hardship. Second, and more significantly the proposed bill will maintain the distinction between individual and corporate taxation and will therefore perpetuate the inequity between the taxation of professional and other business income unless professionals are permitted corporate tax status. The low rate of tax has been raised to 25% but will still be lower than the average rate of tax experienced by many professionals. The ceiling of \$400,000 on the accumulated low rate of tax will still permit professionals to become established in their practice which is the purpose of the low corporate rate of tax.

APPENDIX B  
Incorporations Under the  
Professional Corporations Act S.B.C.1970 C.37

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
1	July 31/70	Dr. V. Baker	Physician	\$10,000 - 10,000 shares @ \$1.00 PV
2	July 31/70	Dr. R.L. Wiggins	Physician	200 Class A Common 49,800 Class B Non-voting All NPV-max.S.P.\$1.00
3	Aug. 4/70	Dr. J.D.Stenstrom	Physician	\$10,000-10,000 shares @ \$1.00 PV
4	Aug. 7/70	Dr. A. Herstein	Physician	\$10,000-10,000 shares @ \$1.00 PV
5	Aug. 12/70	Dr. H.D.MacWilliam	Physician	\$49,000-49,000 shares @ \$1.00 PV 1,000 common shares max. S.P. \$1.00
6*				
7	Aug. 13/70	Gordon C. Hunter	Dentist	\$10,000 - 100 common 9,900 non-cumulative non-voting Preferred redeemable shares PV \$1.00
8	Aug. 13/70	Wm. S. Parteous	Dentist	\$10,000 - 10,000 shares PV \$1.00
9	Aug. 13/70	Robert M. Mann	Dentist	10,000 shares max. S.P. \$1.00
10	Aug. 13/70	Dr. W.M. Kendrick	Physician	\$49,000-49,000 preferred shares PV \$1.00 1,000 common shares max. S.P. \$1.00
11	Aug. 13/70	Dr. G.E. Cox	Physician	\$30,000-3,000 redeemable preferred shares PV \$10. 10,000 shares max.SP \$1.
12.	Aug. 17/70	Drs. H.C. and L. Zeldowicz	Physician	10,000 shares max. SP \$1.00
13.	Aug. 19/70	Joseph Gris	Dentist	\$10,000-10,000 shares @ \$1.00 PV
14.	Aug. 19/70	Dr. A.M. Krisman	Physician	10,000 shares NPV Max. SP \$1.00

\*Incorporation Documents Withdrawn

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
15	Aug. 19/70	Dr. S.H. Frackson	Physician	10,000 shares NPV max. SP \$1.00
16	Aug. 19/70	Dr. Nathan Batt	Physician	10,000 shares max. SP \$1.00
17	Aug. 24/70	Dr. J.H.K. Kim	Physician	\$10,000 - 10,000 @ \$1.00 PV
18	Aug. 25/70	Dr. Bernard Costello	"	10,000 NPV max. SP \$1.
19	Aug. 25/70	Dr. Gordon G. Lott	Surgeon	200 Class A common max. SP \$1.00 49.800 Class B non- voting NPV
20	Aug. 25/70	Dr. M.W. Rosenfeld	Physician	10,000 shares NPV max. SP \$1.00
21	Aug. 26/70	W. C. Weinstein	Dentist	\$15,000-200 common PV \$1.00 14,800 preferred redeemable
22	Aug. 26/70	Dr. L. Matrick	Physician	\$10,000 NPV shares max. SP \$1.00
23	Aug. 27/70	Dr. R. Outerbridge	Physician	10,000 NPV shares max. SP \$1.00
24	Aug. 27/70	Dr. B. J. Gaerber	Physician	10,000 shares max. SP \$1.00
25	Aug. 28/70	Dr. Lionel Tenby	Physician	10,000 shares max. SP \$1.00
26	Aug. 28/70	J. S. Craib	Dentist	10,000 shares max. SP \$1.00
27	Aug. 28/70	Tyrus R. Cobb	Chartered Accountant	10,000 shares NPV max. SP \$1.00
28	Aug. 28/70	Henry E. Thiessen	Dentist	\$10,000-10,000 shares @ \$1.00
29.	Aug. 31/70	J. D. Routtenberg	Chartered Accountant	10,000 NPV max. SP \$1.00
30	Aug. 31/70	D. N. Takahaski	Dentist	\$10,000-10,000 @ \$1.00 PV
31	Aug. 31/70	Dr. Kwok Wei Yue	Physician	\$10,000-10,000 shares PV \$1.00
32	Sep. 1/70	Dr. R. T. Hosie	Physician	\$9,900-9,900 shares PV \$1.00. 100 ordinary max. SP \$1.00



<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
33	Sept. 1/70	Dr. M. I. MacKay	Physician	\$9,900-9,900 shares PV \$1.00. 100 ordinary max. SP \$1
34	Sept. 1/70	Dr. J. C. Donald	Physician	9,900 pref. shares PV \$1.00. 100 ordinary max. SP \$1.00
35	Sept. 1/70	Dr. H. S. Ford	Physician	\$9,900-9,900 preferred shares @ \$1.00. 100 ordinary NPV max. SP \$1
36	Sept. 1/70	Dr. C. Schom	Physician	10,000-PV \$1.00
37	Sept. 1/70	Dr. A. I. Munro	Physician	\$9,000-9,000 preferred shares PV \$1.00 1,000 common shares - max. SP \$1.00
38	Sept. 2/70	Dr. W. Chambers	Dentist	10,000 shares max. SP \$1.00
39*				
40	Sept. 2/70	R. G. Morrow	Cert. Gen. Accountant	\$10,000-10,000 @ \$1.00
41	Sept. 2/70	R. R. Jansen	" " "	\$10,000-PV \$1.00
42	Sept. 2/70	Dr. J. M. Wong	Physician	\$9,000-9,000 preferred PV \$1.00. 1000 common max. SP \$1.
43	Sept. 4/70	Dr. Ernst Frinton	Medicine	10,000 NPV max. \$1.00
44	Sept. 4/70	T.R.K. Erdman	Chartered Accountant	\$10,000-10,000 PV \$1.
45	Sept. 4/70	John M. Work	Dentist	10,000 shares max. PV \$1.00
46	Sept. 4/70	S. J. Ladyman	Chartered Accountant	\$10,000-10,000 PV \$1.
47	Sept. 4/70	Dr. L. C. Kindree	Physician	\$49,000-49,000 preferred shares PV \$1.00 1000 common max. P \$1.00
48	Sept. 8/70	I. Van Messel	Chartered Accountant	10,000 max. SP \$1.00
49	Sept. 14/70	Dr. P. J. Jurcic	Physician	\$10,000-10,000 PV \$1.
50	Sept. 8/70	Dr. GLC. MacKinnon	"	\$10,000-10,000 PV \$1.
51	Sept. 8/70	Dr. P. Fransblow	Dentist	\$10,000-100 common shares. 9,900 pref. \$1.

\*Incorporation Documents Withdrawn

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
52	Sept. 8/70	J. N. Nasedkin	Dentist	\$10,000-10,000 @ \$1.00 PV
53	Sept. 9/70	Dr. H. V. Hughes	Physician	\$49,000-49,000 redeem- able preferred shares PV \$1.00 1,000 common shares NPV max. \$1.00
54	Sept. 9/70	M. J. Cody	Cert. Gen. Accountant	\$10,000-10,000 shares @ \$1.00 PV
55	Sept. 11/70	Marsh, Martin, Marsh & Co.	Chartered Accountants	9,999 NPV max. P \$1.00
56	Sept. 11/70	Dr. E.R. Englebrecht	Physician	\$10,000-10,000 PV \$1.
57	Sept. 14/70	Hugh T. Rae	Accountant	9,000 preferred NPV 1,000 common max. SP \$1.00
58	Sept. 15/70	Dr. M. J. Waterman	Dentist	10,000 shares NPV max. \$1.00
59	Sept. 15/70	Dr. M. Tepowsky	Physician	9,000 preferred NPV 1,000 common max. SP \$1.00
60	Sept. 15/70	Dr. Morton Dodek	Physician	10,000 NPV max. SP \$1.
61	Sept. 17/70	Dr. John Fraser	Physician	\$10,000-10,000 @ \$1.00
62	Sept. 17/70	Dr. J.H. Keough	Physician	\$10,000-10,000 @ \$1.00
63	Sept. 17/70	Pierre R. Dow	Dentist	\$10,000-10,000 @ \$1.00
64	Sept. 17/70	Dr. K. K. Jain	Physician	\$10,000-10,000 PV \$1.
65	Sept. 18/70	Dr. I. H. Williams	Physician	\$999,995-999,995 pref. shares PV \$1.00 5 common NPV-max. SP \$1.00
66	Sept. 18/70	John W. Papman	Dentist	9,000 preferred shares max. SP \$1.00 1,000 common shares
67	Sept. 18/70	Dr. W. R. Morton	Physician	\$10,000-10,000 PV \$1.
68	Sept. 22/70	Dr. H. R. Carter	Physician	50,000 shares-200 common 49,800 preferred NPV Max. SP \$1.00
69	Sept. 22/70	Michael Balanko	Dentist	\$10,000-10,000 PV \$1.

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
70	Sept. 22/70	Dr. R. N. Grant	Physician	50,000 shares - 200 common, 49,800 pref. NPV max. SP \$1.00
71	Sept. 22/70	Dr. R.C. Anderson	Physician	50000 shares - 200 common, 49,800 pref. NPV max. SP \$1.00
72	Sept. 23/70	Dr. K. E. Leslie	Dentist	\$49,800-49,800 pref. shares @ \$1.00 PV 200 common NPV max. SP \$1.00
73	Sept. 24/70	Dr. S. H. Hsu	Physician	\$49,000-49,000 pref. shares PV \$1.00 1000 common NPV \$1.
74	Sept. 24/70	Dr. H.K. Middleton	Dentist	\$49,800-49,800 pref. shares PV \$1.00 200 common NPV max. SP \$1.00
75	Sept. 24/70	W. P. Catalano	Dentist	\$10,000-10,000 shares PV \$1.00
76	Sept. 24/70	Dr. C. R. Campin	Physician	\$49,800-49,800 pref. shares PV \$1.00 200 common NPV max. SP \$1.00
77	Sept. 25/70	Dr. W. F. Baldwin	Physician	\$9,000-9,000 non-cumulative redeemable pref. shares PV \$1.00 1,000 common \$1.00 max.
78	Sept. 25/70	Dr. LVC Friesen	Physician	\$9,000-9,000 non-cumulative redeemable preferred shares PV \$1. 1,000 common \$1.00 max.
79	Sept. 25/70	Dr. C. H. Felix	Physician	\$10,000-100 common 9,900 preferred shares
80	Sept. 28/70	Para River Med. Services	Medicine	10,000 NPV max. \$1.00
81	Sept. 28/70	Dr. A. D. Claman	Physician	10,000 NPV max. \$1.00
82	Sept. 29/70	Dr. J. K. Browne	Physician	\$10,000-10,000 NPV max. \$1.00
83	Sept. 29/70	Dr. D. Bowers	Physician	10,000 NPV max. \$1.00
84	Sept. 29/70	Dr. W.D.McDougall	Dentist	\$49,000 pref. PV \$1.00 1000 common NPV MAX.\$1.

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
85	Sept. 29/70	C. W. Wright	Architect	10,000 NPV max. \$1.00
86	Sept. 29/70	Dr. J. D. Hough	Physician	\$50,000-1000 common shares PV \$1.00 4900 preference PV \$10.
87	Sept. 29/70	Dr. J. L. Stoller	Physician	10,000 NPV max. SP \$1.
88	Sept. 29/70	Gilbert Eng	Architect	10,000 NPV max. SP \$1.
89	Sept. 29/70	Dr. D. M. Shorting	Physician	\$9,900-9,900 pref. @ \$1.00 PV 100 ordinary NPV
90	Sept. 29/70	Terence Webb	Dentist	\$49,000-49,000 redeem- able pref. shares PV \$1.00. 1000 NPV common @ \$1.00
91	Sept. 30/70	Max. Tenenbien & Co.	Certified Gen. Acc.	\$10,000-10,000 shares @ \$1.00
92	Sept. 30/70	T. S. Court	" " "	\$10,000-10,000 @ \$1.00
93	Sept. 30/70	Dr. A. B. Mulholland	Physician	10,000 NPV max. SP \$1.00
94	Sept. 30/70	J. B. Eby	Dentist	\$10,000-10,000 @ PV \$1.00
95	Sept. 30/70	Fred Thornton Hollingsworth	Architect	10,000 NPV \$1.00
96	Sept. 30/70	Gero Medical Services	Medicine	10,000 shares NPV max. \$1.00
97	Oct. 1/70	Dr. L.K. Williams & Associates	"	10,000 NPV max. \$1.00
98	Oct. 6/70	J. H. Bridges	Dentist	\$10,000-10,000 shares PV \$1.00
99	Oct. 6/70	M. Vyas, M.D. J. Rosenblatt, M.D.	Physician	10,000 NPV \$1.00
100	Oct. 6/70	Dr. Helson Chew	Physician	\$9,000-9,000 non- cumulative redeemable preferred shares PV \$1.00 1000 common NPV max. \$1.00
101	Oct. 7/70	Dr. R.F. Stanley	Physician	\$20,000-2,000 redeem. pref. PV \$10. 1000 common NPV max. \$1.00

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
102	Oct. 7/70	Dr. E. C. Prevost	Physician	\$9,900-9,900 pref. PV \$1.00. 100 ordinary NPV \$1.00
103	Oct. 7/70	Dr. W.C. McCauley	Physician	\$20,000-2,000 redeem. pref. shares PV \$1.00 1000 common NPV \$1.00
104	Oct. 7/70	Dr. N. B. Hirt	Physician	10,000 NPV max. SP \$1.
105	Oct. 7/70	Dr. OCL. Gloster	Physician	\$20,000-2,000 redeem. pref. PV \$10.00 1,000 NPV common \$1.00
106	Oct. 8/70	Dr. W. B. Sipko	Dentist	\$10,000-10,000 @ \$1.
107	Oct. 8/70	W. A. Dyck	Dentist	\$10,000-9,000 non- cumulative redeem. pref. \$10.00 1000 NPV common \$1.00
108	Oct. 8/70	Richard Muscot	Dentist	\$10,000-10,000 PV \$1.
109	Oct. 13/70	J.B. Roseborough	Dentist	\$49,800-49,800 pref. @ \$1.00 200 common NPH \$1.00
110	Oct. 14/70	Dr. W. G. Nichl	Physician	\$10,000-10,000 @ \$1.00
111	Oct. 15/70	O. B. Franklin	Dentist	\$10,000-10,000 @ \$1.00
112	Oct. 16/70	Dr. J. Dukelow	Physician	\$10,000-10,000 @ \$1.00
113	Oct. 19/70	G. A. Freeze	Dentist	10,000 shares @ \$1.00
114	Oct. 19/70	Dr. E.N. Hughes	Physician	\$49,800-49,800 pref. PV \$1.00 200 common NPV max.\$1.00
115	Oct. 19/70	H. G. Acqua	Cert. Gen. Acc.	\$10,000-10,000 @ \$1.00
116	Oct. 19/70	Sandman Med. Services	Physician	\$10,000-10,000 @ \$1.00
117	Oct. 19/70	Dr. J. Graham	Physician	\$49,000-49,000 pref. PV \$1.00 1000 common NPV \$1.00
118	Oct. 20/70	Dr. Paul Bratty	Physician	\$10,000-10,000 @ \$1.00
119	Oct. 21/70	Zolton Martonffy Architects	Architect	1000 shares NPV max. \$10.00
120	Oct. 22/70	Dr.W. Billing- Meyer	Physician	\$9,900-9,900 pref. shares PV \$1.00 100 ordinary NPV max.\$1

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
121	Oct. 22/70	Dr. R. Colledge	Physician	\$15,000-1,000 common 14,000 redeemable preference PV \$1.00
122	Oct. 23/70	Dr. Arthur D. Moody	"	\$10,000-10,000 PV \$1.
123	Oct. 23/70	Dr. TCM. Mackenzie	"	\$10,000-10,000 @ \$1.00
124	Oct. 26/70	Dr. P. Kumar Das	"	\$30,000-3,000 redeem. pref. PV \$10.00 10,000 common NPV \$1.
125	Oct. 26/70	Dr. J.D. Warren	"	\$30,000-3,000 redeem. pref. PV \$10.00 10,000 common max.\$1.
126	Oct. 26/70	C.B.K. Van Norman & Associates	Architect	10,000 NPV @ \$1.00
127	Oct. 27/70	K. K. Nishiguchi	Dentist	\$10,000-10,000 common PV \$1.00
128	Oct. 27/70	Dr. G. Singh	Physician	\$10,000-10,000 @ \$1.
129	Oct. 27/70	Pine Med. Serv.	Physicians	\$10,000-10,000 @ \$1.
130	Oct. 28/70	Dr. H.J. Shuster	Dentist	\$24,000-24,000 pref. PV \$1.00 1000 common NPV max.\$1.
131	Oct. 28/70	Dr. Amir Soltan	Physician	10,000 common NPV \$1.00
132	Oct. 28/70	Dr. B. E. Cragg	Physician	\$9,900-9,900 pref. shares PV \$1.00 100 common NPV \$1.00
133	Oct. 29/70	James Cameron	Dentist	\$10,000-10,000 common shares 9000 preferred PV \$10.
134	Oct. 29/70	Dr. D. A. Brown	Physician	10,000 NPV max. SP \$1.
135	Oct. 29/70	Dr. C. P. Holden	Physician	\$50,000-200 common 49,800 pref. All PV \$1.
136	Oct. 29/70	Collins & Collins	Architects	10,000 NPV max. SP \$1.
137	Oct. 30/70	I. W. Busch	Dentist	10,000 NPV max. SP \$1.
138	Oct. 30/70	A. Van Hoek	Dentist	\$20,000-2000 redeem. pref. @ \$10.00 1000 common NPV \$1.00
139	Oct. 30/70	Dr. J. B. Woodward	Physician	\$9000-9,000 pref. Class A PV \$1. 100 common NPV max. \$1.00

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
140	Oct. 30/70	Ross Mathewson	Dentist	\$10,000-10,000 @ \$1.
141	Oct. 30/70	R.W.C. Hackemann	Dentist	200 Class A common 49,800 Class B non- voting NPV max. \$1.
142	Oct. 30/70	Dr. Peter Allen	Physician	\$49,000-49,000 redeem- able preferred shares PV \$1.00 1000 common NPV max. \$1.00
143	Oct. 30/70	Dr. T. M. Edworthy	"	\$10,000-10,000 @ \$1.00 PV
144	Nov. 2/70	B. B. Berezon	Dentist	\$30,000-3,000 redeem- able pref. PV \$1.00 10,000 common NPV \$1.
145	Nov. 2/70	Edward Kito	Dentist	\$49,000-49,000 pref. @ \$1.00 1000 common NPV max. SP \$1.00
146	Nov. 2/70	Dr. T.E. Greene	Physician	\$10,000-10,000 shares @ \$1.00
147	Nov. 2/70	Dr. J. E. Pullak	Physician	\$10,000-10,000 @ \$1.00
148	Nov. 2/70	F. P. Tofin	Architect	10,000 NPV max \$1.00
149	Nov. 4/70	Dr. Danny Strub	Physician	\$10,000-10,000, \$1.00 PV
150	Nov. 4/70	Dr. N. Gelpke	Physician	\$10,000-10,000 @ PV \$1.00
151	Nov. 5/70	F. G. Baker	Dentist	10,000 NPV-\$1.00 max.
152	Nov. 5/70	Dr. A. N. Gerein	Physician	\$10,000-10,000, \$1.00 PV
153	Nov. 6/70	B. B. Corbould	Lawyer	\$10,000-10,000 @ \$1.
154	Nov. 6/70	D. W. Carmichael	Lawyer	\$10,000-10,000 @ \$1.
155	Nov. 6/70	D.D.G. Milne	Lawyer	\$10,000-10,000 @ \$1.
156	Nov. 6/70	F.W. Barry & Co.	Lawyer	\$10,000-10,000 @ \$1.
157	Nov. 6/70	R. J. Hughes	Lawyer	50,000 shares 49,900 Class A non- voting participating common; 100 Class B voting non-particip- ating NPV max. SP \$1.

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
158	Nov. 6/70	Michael Kaburda	Dentist	\$9,000-9,000 non-cumulative redeem. pref. shares PV \$1.00
159	Nov. 6/70	Michael G. Oliver	Lawyer	50,000 shares-49,900 Class A non-voting participating common; 100 Class B voting non-participating max. \$1.
160	Nov. 6/70	Dr. A. G. Gray	Physician	\$30,000-3,000 7% redeemable non-cumulative pref. shares PV \$10.00 100 common NPV
161	Nov. 6/70	Dr. F.C.W. Ho	Physician	\$10,000-10,000 @ \$1.00
162	Nov. 9/70	Dr. F. E. Moore	Dentist	\$10,000-10,000 @ \$1.00
163	Nov. 9/70	Dr. H. G. Cooper	Physician	10,000 NPV @ \$1.00
164	Nov. 9/70	Dr. L.D. Sullivan	"	\$9,000-9,000 non-cumulative redeemable pref. shares PV \$1.00. 1000 common NPV \$1.00
165	Nov. 9/70	D. R. Williams	Lawyer	\$20,000-2000 redeemable pref. PV \$10.00 1000 common NPV \$1.00
166	Nov. 9/70	John C. Davie	Lawyer	\$20,000-2,000 redeemable pref. PV \$10.00 1000 common NPV
167	Nov. 10/70	Rogers, Major & Co.	Lawyers	\$100-100 3% non-cumulative voting preferred shares PV \$1.00; 1650 each of Classes A, B, C, D, E, F. All non-voting, all NPV max. SP \$1.00
168	Nov. 10/70	MacIvor & Co.	Lawyers	\$20,000-1,000 ordinary shares; 19,000 cumulative redeemable 8% pref. shares all PV \$1.
169	Nov. 12/70	Dr. E. J. Chan	Physician	100 common, 9,900 non-cumulative, non-participation 9% redeemable pref. shares NPV
170	Nov. 16/70	Dr. S.Y. Ekairab	Medicine	10,000 @ \$1.00 max.
171	Nov. 16/70	Dr. K. Tawashy	Physician	10,000 @ \$1.00 max.



<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
172	Nov. 16/70	Dr. G. Westgate	Physician	\$10,000-10,000 @ \$1.
173	Nov. 17/70	Dr. P. Robson	Physician	\$10,000-1,000 @ \$10.
174	Nov. 18/70	Dr. A. C. McGonigle	"	\$50,000-49,800 pref. redeem. Class A, 200 common Class B shares PV \$1.00
175	Nov. 18/70	Dr. L. S. Chipperfield	Physician	\$10,000-10,000 @ \$1.
176	Nov. 18/70	D.K. Waterfall	Dentist	\$20,000-2,000 redeem- able pref. PV \$10.00 1000 common NPV
177	Nov. 18/70	J. M. Wilson	Chartered Accountant	\$20,000-2000 redeem. pref. PV \$10.00 1000 common NPV
178	Nov. 18/70	D.L. Atchisin	Chartered Accountant	\$20,000-2000 redeem. pref. PV \$10.00 1000 common NPV
179	Nov. 19/70	J. K. Phelp	Dentist	\$20,000-2000 redeem. pref. shares PV \$10. 1000 common NPV
180*				
181	Nov. 23/70	Dr. W. K. Wankling	Physician	10,000 NPV max. \$1.00
182	Nov. 28/70	Dr. R.B. Ferguson	"	10,000 NPV max. \$1.00
183	Nov. 23/70	G. P. Gutman	Chartered Accountant	\$10,000-10,000 @ \$1.00
184	Nov. 24/70	A. D. Robinson	Dentist	\$20,000-2000 redeem. pref. shares PV \$10. 1000 common NPV
185	Nov. 24/70	Nelson Barlow	Dentist	\$10,000-10,000 shares PV \$1.00
186	Nov. 25/70	Dr. I.W. Stoffman	Physician	\$9,000-9,000 pref. redeem. PV \$1.00 1000 common NPV \$1.00
187	Nov. 25/70	Dr. J. Wong	Physician	\$9,900-9000 pref. PV \$1.00; 100 ordin. NPV
188	Nov. 25/70	Dr. W. A. Jeffries	Dentist	\$10,000-10,000 @ \$1.00

\*Incorporation Documents Withdrawn

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
189	Nov. 25/70	Dr. G. W. Burgess	Physician	\$5,000-5000 common @ \$1.00; 5000 pref. shares @ \$1.00 NPV
190	Nov. 26/70	W. A. Dawson	Chartered Accountant	10,000 shares NPV \$1.00
191	Nov. 26/70	N. D. Knott, MD	Physician	\$10,000-10,000 @ \$1.00
192	Nov. 26/70	G. D. Robertson	Physician	\$10,000-5000 Class A Common; 5000 Class B Common, PV \$1.00
193	Nov. 26/70	Drs. H.S. & M.L. Miller	Physicians	\$10,000-10,000 @ \$1.00
194	Nov. 27/70	Dr. A. D. McKenzie	Physician	10,000 shares NPV \$1.00 each
195	Nov. 27/70	R. J. Miller	Dentist	10,000 NPV max. \$1.00
196	Nov. 30/70	W. G. Donovan	Dentist	99,000 non-voting redeem. pref. shares 1000 common NPV \$1.00
197	Nov. 30/70	Dr. D. French	Physician	\$10,000-10,000 @ \$1.00
198	Nov. 30/70	G.D. Gottschling	Dentist	\$10,000-10,000 @ \$1.00
199	Nov. 30/70	Dr. V. W. Pepper	Physician	\$10,000-10,000 @ \$1.00
200	Dec. 1/70	Dr. D. B. Tee	Physician	\$10,000-100 PV \$100.00
201	Dec. 2/70	Dr. J. Tercester	Physician	10,000 shares max. SP \$1.00
202	Dec. 2/70	Dr. F. E. McNair	Physician	10,000 NPV max. SP \$1.
203	Dec. 7/70	Dr. M. R. Turton	Physician	\$10,000-10,000 shares PV \$1.00
204	Dec. 4/70	Dr. G. H. Thompson	"	\$30,000-1000 common, 29,000 pref. PV \$1.00
205	Dec. 4/70	Mayallo Med. Services	Physicians	\$10,000-10,000 shares PV \$1.00
206	Dec. 4/70	Dr. T. F. Wilkie	Physician	10,000 shares PV \$1.00
207	Dec. 7/70	Dr. R. A. Ewert	Physician	\$10,000-10,000 PV \$1.
208	Dec. 7/70	Jenel Medical Services	Physicians	10 common shares, 25,000 pref. redeem., non- cumulative, non-voting NPV max. SP \$1.00

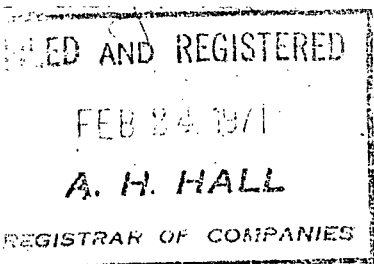
<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
209*				
210	Dec. 9/70	Dr. W. D. Sutherland	Phys.	\$9,000-9,000 non-cumulative redeem. pref. PV \$1.00
211	Dec. 9/70	Dr. M.J.R. Leitch	Dentist	\$10,000-100 common 9,900 pref., non-cumulative redeemable PV \$1.00
212	Dec. 10/70	Dr. P. J. Banks	Physician	50,000-200 common, 49,800 pref., NPV max. SP \$1.00
213	Dec. 10/70	Dr. S. E. Evans	Physician	\$10,000-10,000 @ \$1.
214	Dec. 10/70	Dr. R. E. Gosling	"	
215	Dec. 10/70	Dr. K. A. Tiluch	Physician	\$10,000-10,000 PV \$1.
216	Dec. 11/70	Victor Harris	Accountant	\$10,000-10,000 PV \$1.
217	Dec. 11/70	James Brown	Chartered Accountant	10,000 common NVP max. SP \$1.00
218	Dec. 11/70	Dr. E. S. Buksa	Physician	\$10,000-10,000 @ \$1.
219	Dec. 11/70	Dr. P.J. Carson	Physician	\$10,000-10,000 common PV \$1.00
220	Dec. 11/70	Dr. M. J. Smart	Physician	\$10,000-10,000 shares PV \$1.00
221	Dec. 11/70	Dr. G. W. Tevell	Physician	\$10,000-10,000 shares @ \$1.00
222	Dec. 16/70	Peter Fuller	Architect	1,000 NPV max. SP \$1.00
223	Dec. 22/70	H. B. Hancock	Chartered Accountant	\$20,000-2000 redeem. pref. PV \$10.00; 1000 NPV common max. SP \$1.00
224	Dec. 31/70	H.B. Gharibians	Physiotherapist	\$10,000-10,000 common PV \$1.00
225	Jan. 6/71	L. T. Salloum	Lawyer	10,000 max. SP \$1.00
226	Jan. 6/71	J. C. Doak	Lawyer	\$10,000-10,000 shares PV \$1.00

\*Incorporation Documents Withdrawn

<u>No.</u>	<u>Incorporation Date</u>	<u>Name</u>	<u>Profession</u>	<u>Capitalization</u>
227	Jan. 6/71	P. N. Thorsteinsson	Lawyer	\$10,000-10,000 shares PV \$1.00
228	Jan. 6/71	W.J.A. Mitchell	Lawyer	\$10,000-10,000 PV \$1.00
229	Feb. 3/71	T. A. Liberty	Physio- therapist	\$9,900-99 non-voting redeem. pref. shares PV \$100.00; 100 common NPV max. SP \$1.00
230	Feb. 5/71	W. R. Ramage	Certified General Accountant	\$10,000-10,000 shares PV \$1.00
231	Feb. 24/71	Peter Watts	Lawyer	\$9,000-9,000 non- cumulative redeem. Pref. PV \$1.00; 1000 common NPV max. SP \$1.
232	Mar. 3/71	N. M. Goldman	Lawyer	10,000 NPV max. SP \$1.
233	Mar 3/71	M. G. Kemp	Lawyer	10,000 NPV max. SP \$1.
234	Mar. 11/71	Dr. C. G. Stephenson	Physician	\$30,000-3000 redeem. pref. PV \$10.00 10,000 common max. SP \$1.00
235*				
236	Mar. 19/71	Dr. K. Berry	Physician	10,000 NPV shares max. SP \$1.00

\*Incorporation Documents Withdrawn

All information obtained from British Columbia Gazette



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CONSTITUTION
 .....  
 Registrar of Companies  
 for the Province of British Columbia

1st. The name of the professional corporation is  
 "PETER WATTS, A PROFESSIONAL CORPORATION".

2nd. The registered office of the professional corporation will be situate in the City of Vancouver, Province of British Columbia.

3rd. The objects for which the professional corporation is established is to practise the profession of Barrister and Solicitor.

4th. None of the powers authorized by Section 22 of the Companies Act is hereby excluded, except to the extent that any of those powers are inconsistent with the provisions of the Professional Corporations Act.

5th. The authorized capital of the professional corporation is Nine Thousand Dollars (\$9,000.00) divided into Nine Thousand (9,000) non-cumulative, redeemable Preference shares with a nominal or par value of \$1.00 each and such Preference shares shall have attached thereto the special rights and restrictions set forth in the By-Laws.

6th. The Professional Corporation is also authorized to issue One Thousand (1,000) Common shares without nominal or par value, and the capital of the Professional Corporation shall with respect to those shares be at least equal to the aggregate amount paid to the Professional Corporation on or for such of those shares as are issued, together with such amounts as may from time to time be added by ordinary resolution to such capital and the maximum price or consideration

FILED AND REGISTERED

FEB 24 1971

A. H. HALL

REGISTRAR OF COMPANIES

"PROFESSIONAL CORPORATIONS ACT"

BY-LAWS

of

PETER WATTS, A PROFESSIONAL CORPORATION

CERTIFIED A TRUE COPY

February 24 1971  
Registrar of Companies  
for the Province of British Columbia

PRELIMINARY

1. In these regulations, unless the context otherwise requires, expressions, defined in the "Companies Act" or in the "Professional Corporations Act", or any statutory modification thereof in force at the date at which these regulations become binding on the Company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

2. Table "A" of the "Companies Act" shall not apply to the Company.

SHARES

3. (a) Except as provided in the "Professional Corporations Act", no shares of the Company, nor any legal nor equitable interest therein, may be issued, transferred or transmitted to or held by any person other than a person lawfully entitled to practise the profession in respect of which the Company is incorporated.

(b) Subject to the provisions of the "Professional Corporations Act", the shares shall be under the control of the directors who may allot or otherwise dispose of the same at such times and to such persons and in such manner and upon such terms as they think proper and in particular, without limiting the generality of the foregoing, the directors may allot shares to directors, officers, or employees at such price or prices and upon such terms as the directors may determine.

(c) Subject to the provisions of the "Professional Corporations Act", the directors may grant options to purchase shares to any person for such consideration and for such price or prices and upon such terms as the directors may determine.

(d) Any shares having a nominal or par value may be issued at the nominal value thereof as fully or as partly paid shares as the consideration or part consideration for any property acquired by, or work done for, or obligation undertaken for the Company, or at such premium as the directors may think fit.

4. Every member shall, without payment, be entitled to a certificate under the common seal of the Company containing the statements required by the "Companies Act" and the "Professional Corporations Act" provided that no share shall be held by or registered in the name of more than one person.

5. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee (if any) and on such terms (if any) as to evidence and indemnity as the directors think fit.

6. The right to transfer shares is restricted as provided by the By-laws.

## DEBENTURES

7. Debentures, debenture stock, bonds, or other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued. Any debentures, debenture stock, bonds, or other securities may be issued at a discount, premium or otherwise, and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of directors or otherwise, subject to the provisions of the "Professional Corporations Act".

## CALLS ON SHARES

8. (a) The directors may, from time to time, make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them respectively, and not by the conditions of allotment thereof made payable at fixed times, and each member shall pay the amount of every call so made on him to the persons, and at the times and places appointed by the directors and upon such terms as the directors may determine. A call may be made payable by instalments.

(b) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

## FORFEITURE OF SHARES

9. If a member fails to pay any call or instalment of a call on or before the day appointed for the payment thereof, the directors may, at any time thereafter during such time as any



part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.

10. Such notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made, or instalment was due, will be liable to be forfeited.

11. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

12. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit, subject to the provisions of the "Professional Corporations Act".

13. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares.

14. Any member whose shares have been forfeited shall, notwithstanding, be liable to pay, and shall forthwith pay to the Company all calls, instalments, interest and expenses owing

upon or in respect of such shares at the time of the forfeiture, together with interest thereon, from the time of forfeiture until payment of ten per cent (10%) per annum, and the directors may enforce the payment thereof if they think fit, but shall be under no obligation to do so.

15. A statutory declaration in writing that the declarant is a director of the Company, and that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the Company for the consideration (if any) given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

#### TRANSFER AND TRANSMISSION OF SHARES

16. The instrument of transfer of any share in the Company shall be executed by the transferor, and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register in respect thereof. In the case of a transfer of a share not fully paid-up, the transfer shall contain an acceptance by the transferee of the share and be executed by the transferee.

17. Subject to such restrictions of these By-laws as may be applicable, the instrument of transfer of any share in the Company shall be in such usual or common form as the directors shall approve.

18. The directors may, in their absolute discretion, decline to register any transfer of shares and shall not be obliged to disclose the reasons therefor.

19. The directors may decline to recognize any instrument of transfer unless:-

(a) A fee not exceeding \$1.00 is paid to the Company in respect thereof; and

(b) The instrument of transfer is accompanied by the certificate of shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

20. The executors or administrators of a deceased holder of a share shall be the only persons recognized by the Company as having title to the share.

21. Any person becoming entitled to a share in consequence of the death of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right to make such transfer of the share as the deceased could have made; but the directors shall have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased person before his death.

22. A person becoming entitled to a share by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share,

be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

23. (a) The person proposing to transfer any shares (hereinafter called the "Proposing Transferor") (which expression shall include the legal personal representative of a deceased shareholder) shall give notice in writing (hereinafter called the "Transfer Notice") to the Company that he desires to transfer the same. Such transfer notice shall specify the price and the terms of payment upon which he is prepared to transfer the shares and shall constitute the Company his agent for the sale of the shares to any member of the Company at the price and upon the terms of payment so specified. The Transfer Notice shall also state whether or not the Proposing Transferor has had an offer to purchase the shares or any of them from, or proposes to sell the shares or any of them to any person (hereinafter called the "Prospective Purchaser") and, if so, the name and address of such person shall be specified in the Transfer Notice. The Transfer Notice shall not be revocable except with the sanction of the directors.

(b) The Company shall, within fourteen days from the receipt of the Transfer Notice, in the first place, offer the share or shares referred to in the Transfer Notice to the members other than the Proposing Transferor as nearly as may be in proportion to the existing shares held by them respectively and the offer shall limit the time to thirty days within which the same if not accepted will be deemed to be declined and shall notify the members that any member who desires to purchase any number of shares in excess of his proportion should in his reply, state how many excess shares he desires to have and if all the members do not claim their proportions or claim less

than their proportions the unclaimed shares shall be used for satisfying the claims in excess in proportion to the number of shares held.

(c) If the Company shall within the space of forty-four days after being served with such notice, find a member or members willing to purchase the share or shares (hereinafter called the "Purchasing Member or Members"), the Company shall give notice thereof to the Proposing Transferor who shall be bound upon payment of the purchase price to transfer the shares to the Purchasing Member or Members. Provided that the offer shall be deemed to be declined and the Proposing Transferor shall not be bound to transfer any shares unless the Purchasing Member or Members agree to purchase all of the shares offered.

(d) If the Proposing Transferor after having become bound to transfer all of the shares offered as aforesaid makes default in transferring the shares, or any of them, the Company may receive the purchase money and shall thereupon cause the name of the Purchasing Member or Members to be entered in the register as the holder of the share or shares and shall hold the purchase money in trust for the Proposing Transferor. The receipt of the Company for the purchase money shall be a good discharge to the Purchasing Member or Members and after his name has been entered in the register in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person.

(e) If the Company shall not, within the space of forty-four days after being served with the Transfer Notice, find a member or members willing to purchase all of the shares offered and give notice in manner aforesaid, the Proposing Transferor shall at any time within sixty days thereafter be at liberty to sell and transfer such of the shares as shall not have been

transferred to the Purchasing Member or Members, to the Prospective Purchaser (if any) named in the transfer notice or if no such Prospective Purchaser is named in the Transfer Notice, to any person and at any price not less than or terms less favourable than the price and terms at which the said shares were offered in the Transfer Notice, provided always that any such Prospective Purchaser or person, shall be a person or Professional Corporation lawfully entitled to practise the profession in respect of which the Company is incorporated.

(f) Notwithstanding the provisions of By-law 23 aforesaid, upon the cancellation or suspension of authority to practise of a member of the Company, the remaining members of the Company shall, within six months of such cancellation or suspension, purchase the members' shares as nearly as may be in proportion to the shares held by them respectively and shall pay to the former member the fair market value of his shares as at the date of such suspension or cancellation. In the event that a suspended or cancelled member does not agree with the value fixed by the remaining members for the purchase of his shares, the matter may be submitted by either party to arbitration to determine the value of the cancelled or suspended members' shares, and the provisions of the Arbitration Act shall apply. In the event of such cancellation or suspension where the company has only one member, the Company shall immediately cease to carry on the professional services in respect of which it was incorporated unless and until the shares of the Company are purchased by a person lawfully entitled to practise the profession formerly practised by the company.

(g) Nothing in this By-law shall restrict the right of the directors under By-law 18 and 19 hereof to decline to register or to suspend registration of any transfer of shares.

#### ALTERATION OF CAPITAL AND SHARES

24. The directors may, with the sanction of an ordinary resolution, increase the authorized capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe, or, if the Company is authorized to issue shares without nominal or par value, the number of such shares.

25. The new shares shall be subject to the same provisions with reference to the payment of calls, transfer, transmission, forfeiture, and otherwise as the existing shares in the Company.

26. Whenever the capital of the Company by reason of the issue of preference shares or otherwise, is divided into classes of shares, all or any of the rights and privileges attached to each class may be modified by agreement between the Company and any person purporting to contract on behalf of that class, and such agreement shall be binding on the whole of the shareholders of that class provided such agreement is ratified in writing by the holders of at least three-fourths of the issued shares of that class, or is confirmed by a special resolution passed at a separate general meeting of the holders of shares of that class, and all the provisions relating to general meetings shall, mutatis mutandis, apply to every such meeting, but so that the quorum thereof shall be members holding, or representing by proxy, three-fourths of the nominal amount of the issued shares of that class.

27. Pursuant to the provisions of the "Professional Corporations Act", the Company may offer to purchase all or any of its issued and outstanding shares from such members as the directors may determine and the price paid for any such shares shall be agreed upon between the directors and the offeree.

#### GENERAL MEETINGS

28. The first annual general meeting shall be held within eighteen months from the date of incorporation, and thereafter an annual general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding annual general meeting) and place as may be prescribed by the directors, or, in default, at such time in the month following that in which the anniversary of the Company's incorporation occurs, and at such place as the directors shall appoint. In default of the meeting being so held, the meeting shall be held in the month next following, and may be convened by any member in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

29. The annual general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

30. The directors may, whenever they think fit, convene an extraordinary general meeting, and an extraordinary general meeting shall so be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by the "Companies Act". If at any time there are not within



the Province sufficient directors capable of acting to form a quorum, any director or any member of the Company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

31. Not less than fourteen days' notice of a general meeting at which a special resolution is to be proposed, and not less than seven days' notice of any other general meeting (exclusive of the day on which the notice is given), specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by ordinary resolution, whether previous notice thereof has been given or not, to such persons as are, under the regulations of the Company, entitled to receive such notices from the Company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting PROVIDED HOWEVER, that in the event of a Company having only one (1) member, no notice aforesaid shall be required.

32. At any general meeting, if all the members of the Company are present, the said members may waive the necessity of the giving of any previous notice of such meeting, and an entry in the minute book of such waiver shall be sufficient evidence of the due convening of the meeting.

### PROCEEDINGS AT GENERAL MEETINGS

33. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the financial statements presented by the directors, and the ordinary report of the directors and auditors, the election of directors and the appointment of and fixing of the remuneration of the auditors.

34. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; persons not being less than one (1) in number and holding or representing by proxy a majority of the issued shares shall constitute a quorum.

35. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

36. The president, or, in his absence, the vice-president (if any) of the Company shall preside as Chairman at every general meeting of the Company.

37. If there is no president or vice-president, or if at any meeting either the president or vice-president is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present and entitled to vote shall choose some one of their number to be chairman.

38. The Chairman, may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for twenty-one days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

39. At any general meeting a resolution put to the vote of the meeting shall be decided by a vote in accordance with the provisions of the "Companies Act" and, where the vote is by show of hands, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or

by a particular majority, or lost, and an entry thereof in the book of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number of proportion of the votes recorded in favour of, or against, that resolution.

40. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith.

41. Subject to By-law 40 hereof if a vote is by poll it shall be taken forthwith, or on a resolution, passed by a majority of those present in person, or by proxy for a member, entitled to vote, within seven days and in such manner as the chairman directs, and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded.

#### VOTES OF MEMBERS

42. Subject to the provisions of the Constitution and of these By-laws applicable to any shares issued under conditions limiting or excluding the right of holders thereof to vote at general meetings, upon a show of hands every member present in person, or by proxy, and holding at least one share at that time carrying the right to vote, shall have one vote. On a poll every member present in person, or by proxy, and holding at least one share at that time carrying a right to vote shall have one vote for each such share held by him.

43. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy,

may vote, if otherwise entitled, whether on a show of hands or on a poll, by his committee, or other person in the nature of a committee appointed by that Court, and any such committee or other person may, on a poll, vote by proxy.

44. No member shall be entitled to vote at any general meeting unless all calls presently payable by him in respect of shares in the Company have been paid.

45. (a) In the case of an individual member, votes may be given either personally or by proxy.

(b) In the case of a corporate member which is a Professional Corporation, votes may be given either by proxy or by its representative, duly appointed by resolution of its Board of Directors, who shall be entitled to act in all respects, and be considered for all purposes as a member holding the shares at that time held by his corporate appointor subject to the provisions of the "Professional Corporations Act".

46. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a Professional Corporation, either under the common seal or under the hand of an officer or attorney so authorized. Only persons who are members may act as a proxy if duly appointed in the manner aforesaid.

47. (a) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the registered office of the Company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, or shall be deposited with the chairman of the meeting any time prior to the commencement of the meeting, and in default the instrument of proxy shall not be treated as valid.

(b) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal, or revocation of the proxy, or transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation or transfer shall have been received at the office of the Company or by the chairman of the meeting before the vote is given.

48. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:-

I,  
of in the Province  
of  
being a member of  
hereby appoint  
of

being a member of  
, or him failing  
of  
being a member of  
, as my proxy to  
vote for me and on my behalf at the (ordinary  
or extra-ordinary as the case may be) general  
meeting of the Company to be held on the  
day of , and at any adjournment  
thereof.

Signed this day of

Witness:

#### OFFICERS

49. All officers of the Company shall be persons entitled to practise the profession in respect of which the Company is incorporated.

50. In the event the Company has only one member, that member may be all or any of the officers of the Company.

#### DIRECTORS

51. The number and names of the first directors may be determined in writing by a majority of the subscribers of the Constitution, and, until so determined, the subscribers of the Constitution shall for all purposes be deemed to be the directors of the Company.

52. The remuneration of the directors shall from time to time be determined by ordinary resolution, whether previous notice thereof has been given or not.

53. No director shall be required to hold a share in the Company as qualification for his office, PROVIDED HOWEVER, that all Directors shall be persons entitled to practise the profession in respect of which the Company is incorporated.

#### POWERS AND DUTIES OF DIRECTORS

54. The business and affairs of the Company shall be under the control and direction of a Board of not less than one director who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not, by the "Companies Act" or the "Professional Corporations Act", or any statutory modification thereof for the time being in force, or by these By-laws, required to be exercised by the Company in general meeting, subject nevertheless to any regulation of these By-laws, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by ordinary resolution, whether previous notice thereof has been given or not; but no regulation made by ordinary resolution shall invalidate any prior act of the directors that would have been valid if that regulation had not been made.

55. The directors shall duly comply with the provisions of the "Companies Act", and the "Professional Corporations Act", or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of mortgages, and to keeping registers of Directors and members, and to filing with the Registrar of Companies an annual report and copies of



special and other resolutions, returns of allotments of shares, and of any change in the registered office or of directors.

56. The directors shall cause minutes to be made in books provided for the purpose:-

- (a) Of all appointments of officers made by the directors;
- (b) Of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) Of all resolutions and proceedings at all meetings of the Company, and of the directors, and of committees of directors.

#### SEAL

57. The directors shall provide for the safe custody of the common seal of the Company which shall not be affixed to any instrument except in the presence of:-

- (a) the President or Secretary, or
- (b) such other officer or officers or director or directors of the Company as may be prescribed from time to time by resolution of the Board of Directors.

58. For the transaction of business without the Province, the Company may have an official seal for use in any other Province, State or Country subject to the provisions of Section 13 of the "Companies Act".

## DISQUALIFICATION OF DIRECTORS

59. The office of director shall ipso facto be vacated if the director:-

- (a) by notice in writing to the Company resigns his office; or
- (b) is found lunatic or becomes of unsound mind; or
- (c) becomes bankrupt; or
- (d) ceases to be a director by virtue of Section 108 of the "Companies Act".
- (e) ceases to be lawfully entitled to practise the profession in respect of which the Company was incorporated.

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the Company of which he is a director.

60. In the event a sole Director ceases to be a director by virtue of By-law 59 (b) or (c) or dies, the personal representative of such sole director shall have the right to appoint a successor director (subject to the "Professional Corporations Act") who shall be bound by the provisions of the By-laws.

DIRECTORS, ELECTION, CHANGE, ETC.

61. Subject to By-law number 53 at each annual general meeting of the Company all of the directors shall retire from office, and the Company shall elect directors to fill the offices vacated. A retiring director is eligible for re-election.

62. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

63. The Company may from time to time increase or reduce the number of directors by ordinary resolution, whether previous notice thereof has been given or not.

64. Subject to By-law 53 any casual vacancy occurring in the Board of Directors may be filled up by the directors.

65. Subject to By-law 53 the directors have power at any time, and from time to time, to appoint a person as an additional director.

66. Subject to By-law 53 the Company may by special resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead.

## PROCEEDINGS OF DIRECTORS

67. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall not have a second or casting vote and he shall declare the motion defeated. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

68. The quorum necessary for the transaction of the business of the directors shall be one (1) director or alternate director personally present, but such quorum may be changed at any time by a resolution of the directors.

69. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the By-laws of the Company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

70. The president (if any) of the Company and in his absence the vice-president (if any) shall be the chairman of the Board of Directors; and if there is no president or vice-president, the directors may elect a chairman of their meetings and determine the period for which he is to hold office. If no such chairman is elected, or if at any meeting the president, vice-president, or chairman is not present within fifteen

minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

71. All acts done by any meeting of the directors or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

72. Any director of the Company who may be resident either temporarily or permanently out of the Province may file with the Secretary of the Company a written waiver of notice of any meeting of the directors being sent to him and may at any time withdraw such waiver, and until such waiver shall be withdrawn, no notice of meetings of directors shall be sent to such director, and any and all meetings of the directors of the Company, notice of which shall not have been given to such director, shall (providing a quorum of the directors be present) be valid and binding upon the Company.

73. A director whose permanent place of residence is outside of the Province of British Columbia, or who is about to leave, or is temporarily outside of the Province, or who is ill, of which fact or facts he alone shall determine, may appoint as an alternate director during this absence or residence outside of British Columbia, or illness, any person who is a person entitled to practise the profession in respect of which the Company is incorporated and such appointment shall have effect until revoked and such appointee

76. No director, or other officer of the Company, shall be liable for acts, receipts, neglects or defaults of any other director or officer, or for joining in any receipt or other act for conformity or for loss of damage arising from bankruptcy, insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited, or for loss or damage or happening to the Company through the insufficiency or deficiency of any security in or upon which any of the monies of the Company shall be invested, or for any loss occasioned by any error or oversight on his part, or for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same happen through his own dishonesty.

77. Any director either individually or as a member of a partnership, or as shareholder or director of a company or corporation may, notwithstanding any rule of law or equity to the contrary, be appointed to any office under the directors with or without remuneration, or contract with the Company either as vendor, purchaser, or otherwise, or act as agent for the Company; or be interested in any operation, undertaking or business undertaken or assisted by the Company, or in which the Company is interested, and no such contract or arrangement shall be voided, nor shall any director so contracting or being so interested be liable to account to the Company for any profit realized by any such contract or arrangement by reason of such director holding that office, or of the fiduciary relation thereby established, provided that the nature and extent of his interest must be disclosed by him at the meeting of the directors at which the contract, arrangement or undertaking is determined, if this interest

then exists, or in any other case, at the first meeting of the directors after the acquisition of his interest; and any director shall as a director be entitled to vote in respect of any such contract or arrangement in which he is interested as aforesaid, but this proviso may at any time or times be suspended or restricted to any extent by a general meeting.

78. The directors may from time to time at their discretion, and for the purposes of the Company, borrow, raise or secure the repayment of such sum or sums in such manner and upon such terms and conditions in all respects as they think fit, and, in particular, by the issue of bonds, perpetual or redeemable debentures or debenture stock, or any mortgage, charge, or other security on the undertaking of the whole or any part of the property of the Company (both present and future) including its uncalled capital for the time being.

#### DIVIDENDS AND RESERVE

79. The Company in general meeting may declare a dividend to be paid to the members according to their rights and interests in the profits and may fix the time for payment. No larger dividend shall be declared than is recommended by the directors but the Company in general meeting may declare a smaller dividend.

80. The directors may, from time to time, pay to the members such interim dividends as in their judgment the position of the Company justifies, and in paying dividends, interim or otherwise, may give effect to any preference or priority or other agreement attached to any share, on the issue thereof.

81. No dividends shall be paid otherwise than out of the profits, except as may be otherwise provided by the "Companies Act".

82. (a) Any general meeting declaring a dividend may resolve that such dividend be paid wholly or in part by the distribution of specific assets and in particular of paid-up shares, bonds, debentures, or debenture stock of any other company, or in any one or more of such ways, and the directors shall give effect to such resolution; and where any difficulty arises in regard to the distribution, the directors may settle the same as they think expedient; and may fix the value for distribution of such specific assets, or any part thereof, and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such cash or specific assets in trustees upon such trusts for the persons entitled as may seem expedient to the directors.

(b) Notwithstanding anything in these By-laws contained the directors may from time to time capitalize any tax-paid undistributed income on hand of the Company and may from time to time issue any unissued shares or securities of the Company as a stock dividend representing such tax-paid undistributed income on hand or any part thereof.

(c) Any surplus monies arising from the realization of any capital assets of the Company, or any investments representing the same, or any other undistributed profits of the Company not subject to charge for income tax, may be distributed among the members on the footing that they receive the same as capital.

83. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the



dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid. In the case of shares without nominal or par value, all dividends shall be declared and paid according to the number of shares held. If any share is issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly.

84. The directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves, which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments (other than shares of the Company) as the directors may from time to time think fit.

85. The directors may retain any dividends on which the Company has a lien and may apply the same in and towards the satisfaction of the debts, liabilities, or engagements in respect of which such lien exists.

86. A transfer of shares shall not pass the right to any dividend declared thereon before the registration of the transfer.

87. Notice of the declaration of a dividend, whether interim or otherwise, shall be given to each member entitled to share therein in the manner hereinafter mentioned.

#### ACCOUNTS

88. The directors shall cause true accounts to be kept of all the receipts, credits, payments, stock-in-trade, property, assets and liabilities of the Company, and of all other matters necessary for showing the true state and condition of the Company, and the accounts shall be kept in such books and in such manner as the directors think fit, and to the satisfaction of the auditors and shall at all times be open to the inspection of the directors.

89. The books of account shall be kept at the registered office of the Company, or at such other place as the directors think fit.

90. The directors shall from time to time (subject to the provisions of the "Companies Act") determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorized by the directors or by ordinary resolution, whether previous notice thereof has been given or not, and no member (not being a director) shall be entitled to require or receive any information concerning the business, trading or customers of the Company, or any trade secret or secret process of or used by the Company.

## AUDIT

91. Auditors shall be appointed as provided in the "Companies Act", and their duties shall be carried out or regulated in accordance with and as required by the said Act and the Income Tax Act, or any statutory modifications thereof for the time being in force.

92. A balance sheet shall be made out in every calendar year and laid before the annual general meeting of the Company, made up to a date not more than four months before such annual general meeting. The balance sheet shall be certified by the Company's auditor or auditors, whose report thereon shall be embodied in or accompany the same. The directors may, and on demand of the members shall, report as to the state of the Company's affairs and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

## NOTICES

93. (a) Any notice under the Company's By-laws may be given to a member either personally or by sending it by mail, postage prepaid to such member at his address registered with the Company, or (if he has no registered address) then to the address (if any) supplied by him to the Company for the giving of notices to him, or to his last known address.

(b) Where a notice is sent by post, service of the notice shall be deemed to be effected by addressing, pre-paying, and posting a letter containing the notice, and to have been effected on the day following the date of posting, and in proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and put into the post office.

(c) Where a given number of days' notice or a notice extending over any other period is required to be given, the day of service shall unless it is otherwise provided, be counted in such number of days or other period.

(d) Any notice or document sent by post to, or left at the registered address of, any member, in pursuance of these presents, shall, notwithstanding such member be then deceased, and whether or not the company have notice of his decease, be deemed to have been duly served in respect of any registered shares, until some other person be registered in his stead as the holder thereof, and such service shall for all purposes of these presents be deemed a sufficient service of such notice or document on his personal representative.

94. On demand of any person entitled to receive notice of general meetings, a copy of the balance sheet and report shall, not less than seven (7) days before the meeting (unless some other time be prescribed by the Company in general meeting, or by the directors), be sent to such person in the manner in which notices are to be given hereunder.

95. A notice may be given by the Company to the persons entitled to a share in consequence of the death of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or by any like description, at the address (if any) in the Province of British Columbia supplied for the purpose by the persons claiming to be so entitled.

96. Notice of every general meeting shall be given in some manner hereinbefore authorized to:-

(a) Every member of the Company except those members who (having no registered address within the Province of British Columbia) have not supplied to the Company an address within or without the said Province for the giving of notices to them or who are not entitled to such notice by virtue of these By-laws, and also to

(b) Every person entitled to a share in consequence of the death of a member, who, but for his death would be entitled to receive notice of the meeting.

No other person shall be entitled to receive notices of general meetings.

MISCELLANEOUS - SIGNATURE - BONUS - INDEMNITY

97. The signature to any notice or document given or issued by the Company may be stamped, printed or mechanically reproduced.

98. The Company may give to any person employed by the Company, either in addition to or in lieu of wages or salary, a commission or bonus on the profits of any particular business or transaction or on the gross turnover or sales of the Company's business, or a share in the general profits of the Company and such commission, bonus, or share of profits shall be treated as part of the business expense of the Company.

99. Subject to the provisions of the "Companies Act", every director, manager, or other officer of the Company or any person (whether an officer of the Company or not)

employed by the Company may be indemnified out of the funds of the Company against all liability incurred by him as director, manager, officer or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in which judgment and costs may be given against him or in connection with any application under the "Companies Act" or the "Professional Corporations Act", in which relief is granted to him by the Court.

100. If the Company shall be wound up, whether voluntarily or otherwise, the liquidator or liquidators may, with the sanction of a special resolution, divide among the members in specie or in kind any part of the assets of the Company and may, with the like sanction vest any part of the assets of the Company in Trustees upon such trusts for the benefit of the members or any of them as the liquidator or liquidators with the like sanction shall think fit.

#### COMMISSIONS ALLOWABLE ON SHARES, DEBENTURES, ETC.

101. The Company may at any time pay a commission to any person for subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares, debentures or debenture stock of the Company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares, debentures or debenture stock of the Company, but so that if the commission in respect of shares shall be paid or payable out of capital the statutory

conditions and requirements shall not exceed ninety-five per cent (95%) on the shares, debentures or debenture stock in each case subscribed or to be subscribed. The commission may be paid or satisfied in cash or in shares, debentures or debenture stock of the Company.

SUPPLEMENTARY

102. The following rights and restrictions shall attach to the Preference shares:

(a) The holders of the preference shares shall in each year in the discretion of the directors, be entitled, out of any or all profits or surplus available for dividends, to non-cumulative dividends at the rate of 7% per annum on the amount paid up on the preference shares; the holders of the preference shares shall not be entitled to any dividend other than or in excess of the non-cumulative dividend at the rate of 7% per annum hereinbefore provided for.

(b) In the event of liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, the holders of the preference shares shall be entitled to receive, before any distribution of any part of the assets of the Company among the holders of common shares, an amount equal to 100% of the amount paid thereon and any dividends declared thereon and unpaid and no more.

(c) Subject to the right of the holders of preference shares to vote at a meeting of the holders of such shares the holders of



such preference shares shall not be entitled to receive notice of or to attend or to vote at any general meeting of the Company in respect of their holdings of preference shares.

- (d) The said preference shares, or any part thereof, shall be redeemable at any time at the option of the directors of the Company without the consent of the holders thereof by payment to the holders thereof of the par value of the said preference shares together with all dividends declared thereon and unpaid. If less than the whole amount of the outstanding preference shares shall be so redeemed the shares to be redeemed shall be selected by lot (or otherwise) in such manner as the Board of Directors may determine.

(Section 175)

COMPANIES ACT

"PETER WATTS,

A PROFESSIONAL CORPORATION"

At a meeting of Directors of Peter Watts, A Professional Corporation, duly convened and held at 4584 West 13th Avenue, Vancouver, British Columbia, on the 5th day of July, 1971, the following resolution was duly passed:

"That the Company cease to carry on business, surrender its Certificate of Incorporation and request that the Registrar of Companies strike it off the Register."

CERTIFIED a true copy this 5th day of July, 1971.

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PRESIDENT

EXHIBITS

- A. Letter from Department of National Revenue re:  
Tax Status of Professional Corporations
- B. Questionnaire Required by College of Physicians  
and Surgeons
- C. Tax Saving With a Professional Corporation.

## EXHIBIT B

### COLLEGE OF PHYSICIANS & SURGEONS OF BRITISH COLUMBIA

Questionnaire required to be completed with respect to Section 75 of the Medical Act (as amended) and Sections 3 and 4 of the Professional Corporations Act.

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Section 75 of the Medical Act of British Columbia provides that no member or group of members of the College can carry on the practice of medicine in a corporate name without the written consent of the Executive Committee of the College. The full Council of the College can give such consent. Section 3(2) (b) of the Professional Corporations Act, 1970, requires that a physician or a group of physicians seeking to incorporate a professional corporation must file with the Registrar of Companies a certificate of the College that each of the incorporators is entitled to carry on the practice of medicine in British Columbia and approving the name of the proposed corporation. Section 3(8) of the Professional Corporations Act stipulates, in effect that a copy of a resolution of the Council of the College must be filed with the Registrar of Companies authorizing members of the College to incorporate under the Professional Corporations Act. This has been done. Section 4(4) of the Professional Corporations Act provides as follows:

"All members, directors and officers of a corporation shall be persons entitled to practice the professions in respect of which the corporation is incorporated."

Section 9(3) Provides:

"A corporation shall not carry on professional services except by means of members, directors, officers, employees, or agents of the corporation lawfully entitled to practise the profession in respect of which it is incorporated, but may employ clerks, secretaries, bookkeepers, technicians, and other assistants to perform services that are not usually and ordinarily considered by custom or practice to be professional services."

In anticipation of the College, through its Registrar, receiving inquiries with respect to professional corporations, the Executive Committee has directed the Registrar to submit this questionnaire for completion and return to the Registrar in all cases where an application for incorporation is going to be made to the Registrar of Companies. As each request for consent and approval by the

College must be processed individually by the Executive Committee or the Council, member of the College must not and that consent and approval can be speedily given or given as matter of course in every case.

The College has been instructed by the Registrar of Companies that he will not accept the word "Limited" or "Ltd" in an application for incorporation under the Professional Corporations Act, since in fact liability is not limited under the Act. Furthermore, he intends to require in lieu of "Ltd" the words "Professional Corporation" in the name - i.e. "Dr. A. Smith and Associates, Professional Corporation."

Please complete the following information and have each of the proposed subscribers (incorporators) sign at the foot thereof:

1. Proposed name of corporation:
2. Address where practice of corporation will be carried on
3. Full names of all members of the College who will be subscribers to the Memorandum of Incorporation:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Full names of other physicians who will be employed by the corporation (but not shareholders in corporation) when incorporation comes into effect:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Is it intended that all persons named in Item 3 above be directors of the proposed corporation? \_\_\_\_\_

If not, list full names of intended directors:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. List full names of the members who will be officers of the corporation when it is formed and the office each will hold. (President, Vice-President, Secretary, Treasurer, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED at Vancouver this \_\_\_\_\_ day of \_\_\_\_\_ 19 70

SIGNED by the following members of the College of Physicians & Surgeons of British Columbia, who are the persons who propose to incorporate the professional corporation referred to above.

\_\_\_\_\_  
Dr. \_\_\_\_\_  
\_\_\_\_\_  
Dr. \_\_\_\_\_  
\_\_\_\_\_  
Dr. \_\_\_\_\_  
\_\_\_\_\_  
Dr. \_\_\_\_\_  
\_\_\_\_\_

PLEASE NOTE:

FOR REQUIRED CERTIFICATE ENCLOSE FEE OF \$10.00.

## EXHIBIT C

TAX SAVING WITH A PROFESSIONAL CORPORATION

	<u>No</u> <u>Retention</u>	<u>\$10,000</u> <u>Retention</u>	<u>\$20,000</u> <u>Retention</u>	<u>\$35,000</u> <u>Retention</u>
<u>PRIOR TO INCORPORATION</u>				
Net Income Prior to Incorporation	\$30,000.00	\$45,000.00	\$60,000.00	\$80,000.00
Personal Exemptions	2,700.00	2,700.00	2,700.00	2,700.00
Taxable Income Prior to Incorporation	\$27,300.00	\$42,300.00	\$57,300.00	\$77,300.00
Tax Thereon:				
Basic	\$ 9,720.00	\$17,335.00	\$25,585.00	\$37,450.00
O.A.S. and S.D.	360.00	360.00	360.00	360.00
Surtax	285.00	515.00	760.00	1,115.00
Total Tax Payable	\$10,365.00	\$18,210.00	\$26,705.00	\$38,925.00
<u>AFTER INCORPORATION</u>				
<u>Professional Corporation</u>				
Net Income	\$30,000.00	\$45,000.00	\$60,000.00	\$80,000.00
Less: Salary	12,000.00	12,000.00	25,000.00	45,000.00
Taxable Income	\$18,000.00	\$33,000.00	\$35,000.00	\$35,000.00
Tax Thereon	\$ 3,880.00	\$ 7,110.00	\$ 7,540.00	\$ 7,540.00
Available for Dividends and Retention	\$14,120.00	\$25,890.00	\$27,460.00	\$27,460.00
Dividend Declared (a)	\$14,120.00	\$18,045.00	\$11,770.00	--
<u>INDIVIDUAL</u>				
Salary	\$12,000.00	\$12,000.00	\$25,000.00	\$45,000.00
Dividend	14,120.00	18,045.00	11,770.00	--
Total Income	\$26,120.00	\$30,045.00	\$36,770.00	\$45,000.00
Personal Exemptions	2,700.00	2,700.00	2,700.00	2,700.00
Taxable Income	\$23,420.00	\$27,345.00	\$34,070.00	\$42,300.00
Tax Thereon:				
Basic	\$ 7,589.00	\$ 9,742.50	\$13,105.00	\$17,335.00
Less: Dividend Tax Credit	2,824.00	3,609.00	2,354.00	--
	\$ 4,765.00	\$ 6,133.50	\$10,751.00	\$17,335.00
O.A.S. and S.D.	360.00	360.00	360.00	360.00
Surtax	135.00	180.00	315.00	515.00
Total Tax by Individual	\$ 5,260.00	\$ 6,673.50	\$11,426.00	\$18,210.00
<u>TOTAL TAX BY CORPORATION AND INDIVIDUAL</u>	\$ 9,140.00	\$13,783.50	\$18,966.00	\$25,750.00

## FOOTNOTES

1. S.B.C. 1970 c.37
2. The Province, June 3, 1971 p.1
3. Income Tax Act RSC 1952 c.148 S.85F(1)
4. Ibid S.11(10)(a)
5. SBC 1970 c.37
6. Ibid S.2(d)
7. Ibid S.2(c)
8. Income Tax Act S.3
9. Ibid S.139 (1)(e)
10. Ibid S.139 (1)(m)
11. Ibid S.139(1) (a b)
12. Fainstein v. MNR 52 DTC 102
13. Income Tax Act S.4
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